

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION (L) NO. 1275 OF 2020
IN
COMMERCIAL SUIT NO. 192 OF 2017**

Niraj Dilip Jiwrajka	...Applicant
<i>In the matter between</i>	
Om Project Consultants And Engineers Limited	...Plaintiff
<i>Versus</i>	
Orbit Corporation Limited & Anr	...Defendants

**Mr Mayur Khandeparkar, with Ativ Patel and Darshit Dave, i/b
AVP Partners, for the Applicant.**
Mr Rupesh Gite, i/b Parinam Law Associates, for the Plaintiff.

**CORAM: G.S. PATEL, J.
DATED: 24th August 2021**

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SANKPAL

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Date: 2021.08.25
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PC:-

1. The Applicant, Niraj Dilip Jiwrajka (“**Jiwrajka**”), seeks an impleadment as party Defendant to the Suit. Mr Khandeparkar for the Applicant submits that his client is directly interested in the subject matter of the Suit namely the premises on the 30th and 31st floor admeasuring 11,643 sq ft including terrace and one entire car parking floor in the building called Orbit Haven, at Nepean Sea Road, Mumbai 400 036.

2. On 3rd March 2010, the 1st Defendant developer Orbit Corporation Limited (“**Orbit Corp**”), issued Jiwrjka an allotment letter confirming this allotment of the premises and car parking spaces for a consideration of Rs. 28.50 crores. Of this amount, Rs. 15 crores was paid immediately. The allotment letter was signed by Pujit Aggarwal (“**Aggarwal**”). The balance Rs.13.50 crores was to be payable in three instalments, the last of these being Rs.3.50 crores after possession was delivered for fit-outs. The work on the project began in June 2010. Jiwrjka claims that possession was due by September 2011. In good faith, on Orbit Corp’s request, Jiwrjka paid the remaining consideration of Rs.13.50 crores although it was not then fully due.

3. Aggarwal has had a complicated relationship with the law. In September 2016, he was arrested in some other criminal matter. Then the 2nd Defendant (“**Axis Bank**”), published a notice claiming a mortgage on the entire property. On seeing this notice, Jiwrjka wrote to Axis Bank on 15th September 2016 pointing out that his allotment was prior to the mortgage and that he had paid the entire amount. Consequently, Jiwrjka said, Axis Bank’s mortgage could not possibly affect his rights over the premises. This correspondence went back and forth.

4. Later in 2017, another flat purchaser filed a suit in this Court to which Jiwrjka was the 14th Defendant. The present Plaintiff (“**Om Projects**”) was the 13th Defendant. The plaintiff in that suit filed an Interim Application. Orbit Corp filed an Affidavit showing

Jiwrajka as the owner of the 30th and 31st floors, with car parking spaces etc.

5. On a closer reading of Orbit Corp's Affidavit in Reply, Jiwrajka learnt of a Memorandum of Understanding ("MoU") dated 5th September 2014 between Om Projects and Orbit Corp, by which Orbit Corp had purport to allot these very premises to Om Projects.

6. This is why Mr Khandeparkar says that there is complete overlap between the claims. Jiwrajka and Om Projects both claim rights over the very same premises. Jiwrajka has separately filed a Suit impeaching the Om Project's MoU (Commercial Suit No. 450 of 2017). Undoubtedly, the two suits will have to be heard together. Of necessity, Om Projects is a defendant to Jiwrajka's suit.

7. This makes it even more necessary that the present Interim Application for impleadment be allowed. Jiwrajka should be a defendant in Om Project's suit.

8. The Interim Application is allowed in terms of prayer clause (a).

9. The Plaintiff is directed to carry out the amendments within one week from today without need of reverification. If the Plaintiff does not carry out the amendments by 31st August 2021, Jiwrajka's Advocates will be entitled to carry out the amendments and the Registry will permit the Advocate for Jiwrajka to do so.

10. In these circumstances, Mr Khandeparkar expressly consents to a waiver of the Writ of Summons. The Suit is already finally numbered. The written statement is to be filed within the time provided by the law.

11. The Application is disposed of in these terms.

12. All contentions in the Suit are expressly left open.

13. Both suits are commercial suits of same year. The Applicant's Suit is Commercial Suit No. 450 of 2017. Commercial Suit No. 192 of 2017 and Commercial Suit No. 450 of 2017 are hereby tagged together.

14. Ms Rajashri Kale is requested to issue the necessary directions for tagging the two matters.

15. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)