

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1894 OF 2021
IN
SUIT NO. 163 OF 2021**

Mohammed Kalim Sahiruddin Siddiqui ...Plaintiff
Versus
Royal Realtors & Ors ...Defendants

Mr Akshay Patil, *with Mohan Salian, i/b MGS Legal, for the Plaintiff.*
Dr Abhinav Chandrachud, *i/b MA Rahman, for Defendants Nos. 4, 6 & 7.*
Mr Malhar Zatakia, *with Abdullah M, i/b Ali Bubere, for Defendant No. 8.*

**CORAM: G.S. PATEL, J
DATED: 6th October 2021**

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1. I am not inclined to grant ad-interim or interim reliefs to the Plaintiff in this matter. The Suit is for specific performance. The Plaintiff claims that under an Agreement for Sale dated 6th January 2016 between the Plaintiff and Defendants Nos. 1 to 3, the Plaintiff agreed to purchase Flat No. 702, on the 7th floor of Royal Touch, CS No. 1773, Byculla Division, 11 Sankli Street, 3rd Cross Lane, Byculla, Mumbai 400 008. The 1st Defendant is the developer

partnership firm of which the Defendants Nos. 2 and 3 are the partners.

2. The 4th Defendant is the tenants' association that owns the building. Defendants Nos. 5, 6 and 7 are office bearers of the 4th Defendant association. Dr Chandrachud appears for Defendants Nos. 4, 6 and 7.

3. The 8th Defendant is the original tenant. He has been allotted Flat No. 702.

4. The Plaintiff represented by Mr Patil complains that the tenant could never been accommodated in Flat No. 702. Not only is it of a larger area than that to which the tenant was entitled, but this very flat was the subject matter of the Agreement between the Plaintiff and the 1st Defendant developer. The developer had been given rights by the owner association to create third party rights. He did in fact create such rights in favour of the Plaintiff. Therefore, the submission goes, injunctive and other reliefs should be granted even against the tenant.

5. There does not seem to be sufficient clarity as to the validity of the Agreement that of which specific performance is sought. Dr Chandrachud points out that in a separate arbitration proceedings between the owner and the developer, it was contended that the Agreement on which the Plaintiff relies and of which he today seeks performance was in truth a financing agreement. Whether or not this is correct is another matter. But the arbitral order is that only

the purchasers or allottees disclosed to the owner/tenants' association can be said to have any rights over premises in the building. The Plaintiff's name does not feature in that list. In fact, it is only 8th Defendant who has been certified by MHADA. The actual date of that certification is immaterial, because the certification speaks to a pre-existing tenancy and not subsequent rights.

6. In these circumstances, I do not think it is possible to say that the Plaintiff has made out a prima facie case for the grant of an injunction, let alone for the appointment of a Court Receiver. It cannot be said that the balance of convenience is with the Plaintiff. On any fair assessment, it is the 8th Defendant and the 4th Defendant that will be far more prejudiced if relief is granted than the Plaintiff would be if relief is refused. After all, one cannot lose sight of the fact that the Plaintiff is an incoming owner, not one who has been dishoused by the development. The 8th Defendant, on the other hand, is a previous tenant whose only shelter would be jeopardised if relief is granted to the Plaintiff. Further, the transaction in question is between the Plaintiff and the 1st Defendant developer, not with the Tenants' Association.

7. The IA is dismissed. There will be no order as to costs.

8. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)