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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1403 OF 2021
IN
SUIT NO. 723 OF 2018

Blackplinth Realtors Pvt Ltd …Plaintiff
Versus
Shivram CHSL & Ors …Defendants

Mr Hrushi Narvekar, *i/b Nasir Husain Naik, for the Applicant/ Plaintiff.*
Mr PY Shankar, *for Defendant No. 1.*
Ms Kanchi Kirit Joshi, *i/b M/s. Mahesh Jani & Co, for Defendants Nos. 2,3, 4, 5, 7, 8 & 10.*
Smt Yamuna Parekh, *with Sagar Patil, for MCGM.*
Mr Vinay M Thakker, *Chairman of Defendant No. 1, present.*
Mr Dhiren Savla, *Secretary of Defendant No. 1, present.*

CORAM: G.S. PATEL, J
(Through Video Conferencing)
DATED: 28th July 2021

PC:-

ATUL GANESH KULKARNI Digitally signed by ATUL GANESH KULKARNI Date: 2021.08.03 10:06:54 +0530

1. In this dispute between a developer and a society regarding a Development Agreement, parties arrived at Consent Terms on 18th February 2019. These were taken on record and made an order of the Court on 14th March 2019. Clause 12 of the Consent Terms required the Plaintiff developer to furnish a bank guarantee in the amount of ***Rs. 17.5 crores***. From the Consent Terms, it appears that this was in the nature of a performance bank guarantee. Clause 13 of the Consent Terms provided for a phased reduction of the amount of the bank guarantee corresponding to stages of completion of the development work. The first stage was construction up to the plinth level. It was undisputed that this was completed on 22nd October 2020 and entitled the developer to a reduction in the bank guarantee amount from Rs. 17.50 crores to Rs. 10.50 crores. The Plaintiff did furnish the bank guarantee of Rs. 17.50 crores. It is dated 19th December 2019.

2. The developer therefore seeks a return of the existing bank guarantee accompanied by an undertaking to furnish a substituted bank guarantee in the amount of Rs. 10.50 crores. This is an undertaking that is conveyed to me by the learned counsel on behalf of the Plaintiff, on the Plaintiff's instructions. I accept this as an undertaking to the Court.

3. The 1st Respondent society has approved this fresh proposal for a bank guarantee reduction. The consent of the members of the society is annexed at pages 29 to 32 of the present Interim Application. The society does not oppose the Interim Application.

4. The Interim Application is, therefore, made absolute in terms of prayer clauses (a) and (b).

5. The statement by the Plaintiff to furnish a fresh bank guarantee in the amount of Rs. 10.50 crores on the same terms and conditions as the previous bank guarantee of Rs. 17.50 crores is accepted as an undertaking to the Court.

6. Rather than repeat this exercise as further stages of work is achieved, the Plaintiff proposes to issue a set of bank guarantees aggregating to the Rs. 10.50 crores. Each phase-wise bank guarantee will correspond to the phases set out in Clauses 12 and 13 of the Consent Terms. I believe this is eminently reasonable and convenient to both the Plaintiff and the 1st Defendant. This variation is, by consent, also permitted.

7. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)

Note: This order is modified as per order dated 2nd August 2021 passed on a praecipe for speaking to the minutes. The corrections in the fifth line of paragraph 1 at page 2 are shown in bold, underline and italicize.