

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 825 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 1092 OF 2017**

Shekhar Realtors Private Ltd.

...Appellant

V/s.

Municipal Corporation of Greater
Mumbai and Ors.

**... Respondents
(Orig.Defendants)**

...

Mr. Harish R. Pawar, Advocate for the appellant.

Mr. Ravindra Sirsikar, Advocate for respondent no.1-
M.C.G.M.

Mr. Jitendra S. Shukla, Advocate for respondent no.2.

CORAM : SANDEEP K. SHINDE J.

DATE : WEDNESDAY, 27TH APRIL, 2022.

P.C. :

1. Heard learned Counsel for the parties.
2. Suit instituted by the appellants seeks, decree to declare

that the defendants no.2 and 3, shall not obstruct the plaintiffs from redeveloping the suit property i.e. land bearing Survey No.475, Fort, Mumbai, as more particularly described in the plaint. The next prayer in the suit is to restrain the Corporation from sanctioning and/or granting building permission to the defendant no.2 for developing the suit property. Pending suit, in Notice of Motion moved by the plaintiffs, the learned trial Court at the first instance granted ad-interim relief, however, after hearing the parties, dismissed the Motion by order dated 4th March, 2017. Feeling aggrieved by that order, plaintiffs have preferred this Appeal under Order 41 Rule 1(r) of the Civil Procedure Code. It appears, vide writing dated 19th June, 2022 Smt. Janaki Karkera, owner of the suit property, through her Constituted Attorney-Satish Bejai, granted license to Mr. Rakesh Jain to develop the suit property upon certain terms and conditions.

Rakesh Jain, claims to be the Director of the plaintiff-Company. It is plaintiff's case that, development was undertaken by the plaintiff-Company. However, for some reasons, the Company could not complete the development. In the circumstances, vide Memorandum of Understanding dated 7th October, 2004, the development was entrusted to and taken over by Mr. Nitin Shirke-defendant no.2 with the consent of Smt. Janaki Karkera. Clauses-(1), (2), (3) and (4) of the Memorandum of Understanding reads as under :

“1. The Owner hereby agrees, authorize and permits the Developer to complete the construction of the building by using the available FSI and to apply BMC for getting the IOD at his own cost.

2. The Confirming party hereby given his consent and NOC to the developers to continue to avail the service of Mr. Sanjay Tatkar, Architect appointed by the Confirming party and also apply for IOD to B.M.C.

3. On receipt of the IOD from BMC, the

Developer hereby agrees to pay an amount of Rs.20 lacs (Rs. Twenty lacs only) to the confirming party being the full and final settlement of the cost/expenses incurred by the Confirming party for obtaining the necessary permissions from the local authority till date such as MHADA, B.M.C. and other concerned authorities.

4. Till the said amount of Rs.20 lacs is paid by the Developer to the Confirming Party, the Confirming party hereby agrees to create a charge on the said property and/or construction if any put up thereon in favour of the Confirming Party for unpaid amount of Rs.20 lacs payable to the Confirming Party.”

5. It is plaintiff's case that, defendant no.2 did not pay him Rs.20,00,000/- were terms of Clause-3, reproduced above. Thus, the plaintiffs terminated the MOU and filed the suit in question, but without seeking declaration that the MOU dated 7th October, 2004 does not bind them.

6. Reading Clauses (1) to (4), conjointly, imply that

Rs.20,00,000/- were payable, once I.O.D. is granted by the Corporation. Admittedly, till date, the BMC has not issued IOD to the defendant no.2. Therefore, apparently suit could not have been instituted.

7. In any case, the trial Court, has declined the interim relief, on the ground that the MOU was executed between Miss. Karkera owner of the suit property, Rakesh Jain and defendant no.2, to which plaintiff-Company, was not a party. In consideration of these facts, in my view, no case is made out to interfere in the impugned order. The Appeal, alongwith all pending applications therein, are therefore dismissed.

7. However, since the plaintiff has reserved right to seek leave under Order 2 Rule 2, as could be seen from para-7 of the plaint, plaintiff may move the trial Court, to seek appropriate leave. If, such an application is, moved, the trial

Court shall decide the same in accordance with law. As a result, Appeal is dismissed. However, hearing of the suit is expedited.

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(SANDEEP K. SHINDE, J.)