

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

WRIT PETITION 6867 OF 2012

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Smt. Kausalya Kundalik Dolas ... Petitioner.

Versus

M/s. Accord Properties & Ors. ... Respondents.

Mr. Arjun Kadam, Advocate Mr. S.R. Nargaolkar for the
Petitioner.

CORAM : ROHIT B. DEO, J.

DATE : JUNE 17, 2022

P.C. :-

1. The office note is that the Petition is dismissed as against Respondents 23 and 24 since they were not served.
2. The learned counsel for the Petitioner states that the said Respondents are not contesting Respondents and their names be deleted from the cause title.
3. The deletion is permitted at the risk of the Petitioner.
4. Petitioner is the Defendant in Regular Civil Suit 130 of

2007, instituted for decree of perpetual injunction. The main prayer clauses of the suit read thus :

A) By an order of perpetual injunction the defendant either herself or through her attorneys, assigns, nominees, representatives may be restrained from creating any nuisance, hindrance, disturbance and annoyance to the lawful possession and lawful activities of plaintiff no. 1 and 2 of development and sale of units upon the suit property as per the mutual terms inter-se the plaintiff.

B) Plaintiffs may be allowed to carry out the necessary amendments to present suit as and when required, with permission of Hon'ble Court.

C) Interim orders as prayed for by separate application may be granted.

5. Before framing of issues and commencement of evidence, the Defendant preferred Application Exh.36, seeking dismissal of the suit on the premise that the Plaintiff firm has sold all units situated in the suit property, construction is completed and possession of the units handed over to respective purchasers and, therefore, the cause of action does not survive.

6. The Plaintiffs resisted the Application on the premise that if the suit is dismissed, undue advantage will be taken by the Defendant and harassment may continue. The Plaintiffs further pointed out that the Defendant has preferred a counter-claim, and the suit as well as the counter-claim can be adjudicated only after the evidence. The learned trial Judge reasoned that while the Plaintiffs are basing the claim on purported release deed and the deed of confirmation allegedly executed by the Defendant, the counter-claim seeks cancellation of the alleged documents.

7. While the reasons spelt-out, may not be entirely satisfactory, I do not consider interference in writ petition necessarily. Since the issues are not framed and evidence is yet to commence, it would be premature to hold that the entire cause of action is obliterated. This aspect can be properly dealt with by the Court below after evidence is adduced.

8. While I see no reason to interfere and I am dismissing the Petition, considering that the suit is pending since 2007,

the trial Court is requested to expedite the suit and to finally dispose of the same within next eighteen months.

(ROHIT B. DEO, J.)

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