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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
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INTERIM APPLICATION NO.18307 OF 2022
IN
FIRST APPEAL NO.1057 OF 2022

M/s.Chawre Associates through its partners ...Appellants
..Ori.Defts.

V/s.

M/s.Mehlabin Builders & Developers
through its partners ...Respondents
...Ori.Plffs.

IN THE MATTER BETWEEN :

M/s.Chawre Associates through its partners ...Appellants
..Ori.Defts.

V/s.

M/s.Mehlabin Builders & Developers
through its partners ...Respondents
...Ori.Plffs.

Mr.Y.S. Jahagirdar, Senior Counsel with Mr.Surel S. Shah,
Ms.Sharvari Kanetkar i/b Mr.Jayesh Joshi for the Appellant.

Mr.Pratik B. Rahade for the Respondent Nos.1 to 6.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 12TH OCTOBER, 2022.

P.C. :-

1. By a separate order passed today in First Appeal No.1057
of 2022 filed by the applicants, the appeal is already admitted.

2. Leave to amend is granted to insert the term 'para 5'

before the term 'para 6' in the 8th line of prayer clause (c). The amendment shall be carried out forthwith. Reverification is dispensed with. The amendment shall also be carried out in the copies supplied to the respondents.

3. The applicants have impugned the decree passed by the learned trial Judge refusing to pass an order and decree for specific performance, directing the applicants to pay the compensation in the sum of Rs.17,51,00,000/- with 6% interest p.a. from the date of filing of the suit till passing of decree with interest @ 8% p.a. from the date of decree till realization.

4. Mr.Jahagirdar, learned senior counsel for the applicants invited our attention to some of the findings recorded by the learned trial Judge and submitted that this is a case for unconditional stay of the decree passed by the learned trial Judge.

5. A perusal of the decree passed by the learned trial Judge indicates that though the learned trial Court has recorded the findings that the respondents (original plaintiffs) have not proved their readiness and willingness to perform their part of obligation, has awarded compensation under section 73 of the Indian Contract Act, 1872 in the sum of Rs.17,51,00,000/- with interest in addition to the decree for payment of Rs.40,89,000/- with interest at the rate of 6% p.a.

6. In our view, the findings rendered by the learned trial Court are inconsistent. Learned trial Court once having rendered the finding that the plaintiffs have failed to show their readiness and willingness to perform their part of obligation, the trial Court could not have passed an order for awarding compensation under section 73 of the Indian Contract Act, 1872.

7. In our view, the applicants have thus made out a case for grant of unconditional stay of the decree passed by the learned trial Court. Interim application is made absolute in terms of prayer clauses (b) and (c). No order as to costs.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)