

Varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3890 OF 2019
IN
FIRST APPEAL NO. 1450 OF 2012**

C B Enterprises, through its proprietor Sushil B
Ramhadin Mishra ...Applicant
In the matter between
Anupama B Shah, the Proprietress of M/s
Anupam Developers ...Appellant
Versus
Feroze Bomanshah @ Babanshah Taraporewala &
Ors ...Respondents

**WITH
CIVIL APPLICATION NO. 3327 OF 2012
IN
FIRST APPEAL NO. 1450 OF 2012**

Anupama B Shah, the Proprietress of M/s
Anupam Developers ...Applicant
Versus
Feroze Bomanshah @ Babanshah Taraporewala &
Ors ...Respondents

**WITH
CIVIL APPLICATION NO. 2488 OF 2019
IN
FIRST APPEAL NO. 1450 OF 2012**

Feroze Bomanshah @ Babanshah Taraporewala &
Ors ...Applicant
Versus

Anupama B Shah, the Proprietress of M/s
Anupam Developers

...Respondents

Dr A Chandrachud, *with Jagdish G Aradwad(Reddy) for the
Applicant in CAF/3890/19.*

Mr Sameer Pendse, *i/b Ashwin Rajane, for the Original Appellant.*

Ms Mudita Pawar, *i/b Sujay Gawade, for the Respondent No. 1(a),
1(b) in CAF/3890/19.*

Mr Nishant Tripathi, *i/b M Tripathi & Co., for Respondent No.2, in
CAF/3890/19.*

Mr Pankaj Das, *for Respondent No.3(CIDCO).*

**CORAM G.S. Patel &
 Gauri Godse, JJ.**

DATED: 14th October 2022

PC:-

1. This Civil Application No. 3890 of 2019 is, in our view, thoroughly misconceived.

2. The dispute relates to a tract of land of 2250 Sq. Mtrs. at village Ghansoli in the command area of the City and Industrial Development Corporation of Maharashtra Ltd (“**CIDCO**”), the 3rd Respondent to the First Appeal. This land was subject to what was called the 12.5% scheme at that time applicable to the Ghansoli land. CIDCO is the Town Planning and Development Authority for this area under the Maharashtra Regional and Town Planning Act 1966. The government acquired about 6 Acres and 15 Gunthas of land from one Firoz Bomanshah Taraporewala (“**Taraporewala**”). The 12.5% scheme was intended to compensate original land owners with a grant of land in addition to cash compensation, meaning that

the amount of cash compensation and its burden on the exchequer was proportionately reduced. There is no dispute about Taraporewala's entitlement to the Ghansoli land.

3. On 26th November 1999, Taraporewala entered into a MOU with one US Roofs Ltd, Respondent No. 2 to the First Appeal agreeing to transfer 50% of this Ghansoli plot to US Roofs. That plot was of course to be delivered to Taraporewala by CIDCO. The land delivery had till then not taken place.

4. Then on 15th January 2003, there was another MOU between Taraporewala and US Roofs. This time, Taraporewala agreed to transfer the whole of the Ghansoli land to US Roofs.

5. About a year later, on 7th February 2004, Taraporewala signed yet another MOU, in respect of this very land, this time with Anupam Developers represented by its authorised signatory, Bhupendra Shah. The consideration was Rs 12 lakhs.

6. On 4th November 2006, Taraporewala entered into yet another agreement. This was now with present applicant CB Enterprises, a proprietary concern. It was in respect of 50% of the Ghansoli land, i.e., about 1125 Sq. Mtrs.

7. In 2006, US Roofs sued Taraporewala in Special Civil Suit No. 505 of 2006 seeking specific performance of the Taraporewala-US Roofs MOU of 15th January 2003 (the second one for 100% of the land). US Roofs' application for interim relief failed in

December 2008. An appeal from that order also failed on 13th March 2009.

8. On 20th May 2009, CIDCO finally allotted the plot to Taraporewala.

9. On 18th June 2009, Anupama Shah as the proprietor of Anupam Developers (of which her husband, Bhupendra Shah, was the authorised signatory) filed Special Suit No. 491 of 2009 before the Civil Judge, Senior Division, Thane. This was for specific performance of the Taraporewala-Anupam Developers MOU of 7th February 2004.

10. In June 2009, Taraporewala allegedly signed two MOUs with CB Enterprises regarding the Ghansoli land.

11. On 11th November 2009, the Civil Judge, Senior Division in Anupama Shah's specific performance suit granted an injunction against Taraporewala from creating third party rights over Ghansoli property.

12. The suit filed by Anupama Shah went to trial before the Civil Judge Senior Division. Evidence was led, including that of the brother of proprietor of CB Enterprises.

13. On 9th April 2012, the Civil Judge, Senior Division, Thane dismissed Anupama Shah's specific performance suit. The present First Appeal was filed on 7th September 2012 and on 11th October

2012, a Division Bench of this Court granted Anupama Shah in Appeal ad-interim relief.

14. Taraporewala died on 17th February 2015.

15. On 18th February 2016, Taraporewala's heirs and CB Enterprises entered into a sale agreement in regard to the suit property. On 12th April 2016, there came to be executed a tripartite agreement between Taraporewala's heirs, CB Enterprises and CIDCO. On 27th June 2016, CIDCO issued a notice to CB Enterprises asking it to show cause why the tripartite agreement should not be cancelled for violating the ad-interim order of 11th October 2012. Ultimately, on 15th July 2016, CIDCO terminated the tripartite agreement on this ground. We note that A Special Leave Petition filed by Taraporewala's heirs challenging a previous order of 7th June 2016 of this Court continuing the ad-interim relief failed on 14th September 2016.

16. Taraporewala's heirs were impleaded in the First Appeal on 13th October 2016, when the appeal was formally admitted. The previous interim order was continued.

17. Meanwhile, CB Enterprises challenged CIDCO's cancellation or termination of the tripartite agreement in Writ Petition No. 10256 of 2016. On 24th October 2018, that Writ Petition was dismissed as withdrawn but with liberty to CB Enterprises to 'file appropriate proceedings.' It is then, on 23rd August 2019, that CB Enterprises

filed this Civil Application seeking intervention and impleadment as a respondent in Anupama Shah's First Appeal.

18. CB Enterprises has never filed suit on any agreement that it claims to have had with Taraporewala or with Taraporewala's heirs. Its so-called agreement/s has/have received no adjudication at any time. It has withdrawn its challenge to CIDCO's termination of the tripartite MOU. Liberty was reserved to CB Enterprises to adopt appropriate proceedings. CB Enterprises was never a party to the Anupama Shah's suit. It was not a defendant. It did not even seek impleadment in the suit itself. We believe this is entirely fatal to CB Enterprises' present Interim Application for impleadment in this first appeal.

19. Dr Chandrachud argues that CB Enterprise has an 'interest in the land'. We do not think this is a correct statement either on facts or law. CB Enterprises at best has some MOU or writing. No title has ever passed to CB Enterprises. There is no adjudication in CB Enterprises' favour on that writing or on those writings. CB Enterprises has no registered conveyance or any document by which title validly passed to it. A mere agreement creates no interest in the land.

20. Before the Trial Court, CB Enterprises did not even seek to be added as defendant. It was not part of the lis. No issues were struck between Anupama Shah and CB Enterprises and none fell for consideration by the Trial Court. We are asked to believe that we can do all this because the appeal is a continuation of the suit. But by

that same logic, the application by CB Enterprises must indeed fail. It is impossible to assess in the First Appeal a point for determination that does not arise from the lis before the Trial Court or from the issues that were framed by the trial court. This is not a case where one of the parties to the lis seeks to lead additional evidence or to take additional documents on record. An entirely new case is being introduced in somebody else's appeal.

21. It is clear to us what is being attempted. CB Enterprises now has a very significant problem about limitation and, at a minimum, about delay and laches. It cannot get a substantive decretal order in its favour in this roundabout fashion when its rights have never been adjudicated — indeed, when it has never *sought* an adjudication of its rights. Why CB Enterprises has filed no suit is best known to itself.

22. Dr Chandrachud relies on the decision of the Supreme Court in *Lala Durga Prasad and Anr v Lala Deepchand and Ors.*¹ But the relevant paragraphs, in our view, do not assist Dr Chandrachud. That was a question of what is the form that a decree must take and who must join in it. In our view there is no question of CB Enterprises joining in any such decree simply because all that it has is a claim and an unadjudicated one at that. Even more simply put, CB Enterprises does not have and never acquired any title that it could validly pass to anyone at all. There is, therefore, no question of CB Enterprises joining in the execution of any decree.

1 1954 SCR 360.

23. Then reliance is placed on the Supreme Court decision in *Thomson Press (India) Limited v Nanak Builders and Investors Pvt Ltd & Ors.*² for the proposition that a transferee or a purchaser pendente lite may be impleaded in a pending specific performance suit. This is at the discretion of the court. The general proposition is not contentious. But we fail to see how this assists CB Enterprises, because the requirement is not that every person who claims to be a transferee must always and necessarily be impleaded. This can happen if there is a question that arises properly in the lis of a subsequent purchase document. To be able to achieve this status, CB Enterprises should have first in any case applied before the Trial Court. It would then have had to establish that it was indeed a transferee and a bona fide one without notice. It would also have had to show that its transfer was not affected by the trial court's interim injunction below Exhibit 5. Merely relying on a general principle will not assist CB Enterprises given the facts of this case.

24. Finally, reliance is placed on the three Judge Bench decision of the Supreme Court in *Kasturi v Iyyamperumal & Ors.*³ to contend that CB Enterprises was a necessary party to Anupama Shah's suit for specific performance. It is actually the other way around. Had this been Taraporewala's suit, then perhaps an impleadment of CB Enterprises might have been called for. But even that is doubtful in light of the stand that Taraporewala family took. The test in *Kasturi* is that to be impleaded as a necessary party there must be a right to some relief against the vendor and a demonstration that no effective decree can be passed without that party, i.e., CB Enterprises. This

2 (2013) 5 SCC 397.

3 (2005) 6 SCC 733.

would have been so had CB Enterprises been in possession either from CIDCO directly or from Taraporewala or if it had an adjudicated claim in its favour such as an order or a decree in a suit for specific performance. It had none of these. An effective decree can indeed be passed either in favour of Taraporewala (the original defendant to the suit and the respondent to the First Appeal) or in favour of Anupama Shah, the plaintiff in the specific performance suit and the appellant before us, without requiring CB Enterprises at all. It appears to us plain that whichever way the First Appeal is decided, CB Enterprises can have nothing at all to say or do in regard to implementation of the final order. It cannot obstruct. It cannot delay. It cannot interfere in execution. To do any of this, it needs to have had some rights in his favour so declared by a jurisdictionally competent court. A mere writing is insufficient. This is all that CB Enterprises has.

25. Dr Chandrachud in fairness points out that in *Gurmit Singh Bhatia v Kiran Kant Robinson & Ors*,⁴ the Supreme Court had before it a case that raised the question of the tests of joinder of a necessary and proper party. The Supreme Court held that an impleadment application by a later transferee of the property cannot be allowed against the wishes of the plaintiff in a specific performance suit. If the plaintiff has notice of the claim to title by others who are not joined and yet does not want to join them, the plaintiff does so at his or her risk. The plaintiff, being dominus litis, cannot be forced to join a third party. The supreme Court noted the earlier decision in *Kasturi* although the decisions in *Thomson Press* and *Lala Durga Prasad* do not seem to have been cited. However, this is

4 (2020) 13 SCC 773.

inconsequential, in view of our finding that neither *Thomson Press* nor *Lala Durga Prasad* assist the applicants.

26. The Civil Application is without merit. It is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)