

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4635 OF 2016
IN
FIRST APPEAL NO.1637 OF 2016

Kisan Waman Bhoir & Ors.] ... Applicants

Vs.

M/s. Lodha Estate Private Limited]
through its Director Mr. Rajendra]
Lodha] ... Respondent

...

Mr. Gautam J. Jain h/f. Mr. M.J. Bhatt for applicants.

Mr. Amogh Singh with Mr. Anup Deshmukh for respondent.

...

**CORAM : K.R. SHRIRAM &
KAMAL KHATA, JJ.**

DATED : 06TH DECEMBER, 2022.

P.C.:-

1. On 11/02/2021, the following order was passed:

“Heard. The learned counsel for the Respondents submits that the matter is already settled between the parties. He submits that the Appellant has agreed to withdraw the Civil Application as well as the First Appeal. He submits that he will file an affidavit to that effect within two weeks from today, with copy to other side.

2. The learned counsel for the Applicants submits that he tried to contact his client but there is no response. He seeks some time to take instructions from his client, whether they want to withdraw the First Appeal and the Civil Application. At his request, S.O. to 12.03.2021.”

2. Mr. Jain for appellant/applicant states that he has not been receiving any instructions, though he has addressed few communications to appellant seeking instructions.

3. Respondent did not comply with its undertakings of filing the affidavit within two weeks from 11/02/2021. After the matter was called out, counsel appearing for respondent undertook to file the affidavit during the course of today and also stated, after expressing regret, to abide by any terms the court may fix, including giving donation to a charity, the court may suggest.

4. The matter was therefore, kept back, to be called out at 4.15 p.m. today for filing the affidavit.

At 4.45 p.m.

5. Mr. Singh tenders an affidavit of one Piyush Thakkar affirmed today, to which he has annexed a copy of Agreement to Sell dated 21/08/2017.

6. Mr. Singh says that clause (4) of the agreement refers to an undertaking by appellant to withdraw this appeal. Mr. Jain

concur that in the agreement, there is a clause that the present appeal will be withdrawn by appellant. At the same time, Mr. Jain states that he has no instructions. Accepting the statement made by counsel, appeal dismissed for want of prosecution. Consequently, interim application also stands dismissed.

7. The undertaking of Mr. Singh, on instructions, to donate Rs.50,000/- to K.E.M. Hospital, within one week from today is accepted. The said amount to be used in the neurosurgery DSA department and confirmation letter, along with a copy of this order, be sent to Dean, K.E.M. Hospital. The account details of K.E.M. Hospital are as under:

Bank Account of Hospital	:	Poor Box Charity Fund, K.E.M. Hospital, Mumbai.
Bank Account Number of Hospital	:	99350100000877 (S.B.)
Bank and Branch	:	Bank of Baroda, Parel Branch
Address, Tel. No., Fax No. and e-mail of the concerned Bank.	:	Bank of Baroda, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra, 022-24713820, dbpare@bankofbaroda.com
MICR Code Number	:	400012246
IFSC Number	:	BARB0DBPARE (5 th Letter is Zero)
PAN	:	AAATK3087D
Type of Account	:	Saving A/c.

8. Stand over to 13/12/2022 for compliance.

[KAMAL KHATA, J.]

[K.R. SHRIRAM, J.]