

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 582 OF 2016
WITH
NOTICE OF MOTION NO. 95 OF 2017
WITH
NOTICE OF MOTION NO. 1870 OF 2016
IN
SUIT NO. 582 OF 2016

Vishal Usha Kejriwal ... Plaintiff

Versus

Omprakash L. Changoiwala & Ors. ... Defendants

Mr. Rajesh Singh a/w Karan Mehta, Iftexhar Sayed for the Plaintiff.
Ms. Swati Sagvekar a/w S.V. Choughule for Defendant Nos.1 and 2.
Mr. Piyush M. Shah, Dishang Shah, Hetta Sagar for Defendant No.3.
Mr. Chittaranjan Das for Defendant No.4.
Mr. Arun Changoiwala, Defendant No.2, present.
Mr. Manish V. Shah, Defendant No.4, present.
Mr. Vaibhav H. Jasani and Nikunj Jasani, Partners of Defendant No.3,
present.

CORAM : R.I. CHAGLA, J.

DATED : 06th OCTOBER, 2022

ORDER :

1 Parties are present in the Court. Parties have settled their disputes. Consent Terms are tendered which are taken on record and marked 'X' for identification with today's date. These are signed by the

Plaintiff and the Advocate for the Plaintiff as well as by Defendant Nos.1 to 4 and the Advocates for Defendant Nos.1 to 4 respectively.

2 Appended to the Consent Terms is a schedule wherein the properties have been described and undertakings given by the parties that all allegations, contentions and submissions raised between the parties in the present Suit or otherwise are hereby withdrawn unconditionally. The parties have in clause 31 stated that they shall abide by the respective undertakings given in the Consent Terms with a request to this Court to accept the same. Accordingly, the undertakings in the Consent Terms are accepted as undertakings to this Court.

3 Further appended to the Consent Terms is a draft copy of the Tripartite Agreement under which Defendant No.1 is to relinquish, release and transfer all his rights, title and interest in all the three flats described in Clause 4 of the Consent Terms along with three fixed car parkings also described in Clause 4 of the Consent Terms in favour of the Plaintiff. Defendant No.1 alongwith Defendant No.3 and the Plaintiff have agreed to sign, execute and register three Tripartite Agreements with Sub-Registrar, Borivali No.5.

4 Further appended to the Consent Terms at Annexure-2 is the newly amended plan wherein the aforementioned three flats and three

fixed car parkings are demarcated in red colour. The said three flats with the said three fixed car parkings come to the share of the Plaintiff. Further appended to the Consent Terms at Annexure-3 is draft of Supplementary Development Agreement to be executed between the Plaintiff and Defendant Nos.1 and 3 within 30 days from the date of Consent Terms. Further, the parties have agreed to vacating the interim order and withdrawal of present Suit and also Miscellaneous Petition No.49 of 2016, as mentioned in Clause 12 of the Consent Terms.

5 Time schedule to complete development work has been revised to 24 months (plus six months grace period) from the date of obtaining further C.C. which shall be obtained within two months from the date of vacating order dated 04.04.2016. It has been agreed between the parties that any rent or other payables shall be paid by Defendant No.3 to the Plaintiff and Defendant No.1 in the same ratio of flats between the Plaintiff and Defendant No.1.

6 The consequences of breaches are mentioned in Clauses 13 and 16 of the Consent Terms. It is further stated in Clause 20 of the Consent Terms that the Plaintiff shall take necessary steps simultaneously to unconditionally withdraw the Miscellaneous Petition No.49 of 2016 pending before this Court against the grant of probate of the last Will and

Testament dated 14.03.2001. Further, the Plaintiff has consented for recall of all the interim orders passed therein including order dated 04.04.2016 passed by this Court. It is stated in Clause 22 of the Consent Terms that the Plaintiff consents for the grant of the probate for the last Will and Testament dated 20.11.1985 of his father late Mr. Vinod Kumar Kejriwal. Further undertakings given as aforementioned is accepted as undertakings to this Court.

7 The Suit is disposed of and decreed in accordance with the Consent Terms.

8 Interlocutory applications filed in the Suit do not survive and are accordingly disposed of.

9 Drawn up decree/ order is dispensed with unless the parties seek drawn up decree/ order, in which case they are entitled to apply.

10 A soft copy of the Consent Minutes of Order will be uploaded as the second order in the matter.

11 The Registry is to ensure that the hard copy of the signed Consent Minutes of Order is permanently retained on file as part of the record and is not sent for destruction in the ordinary course.

12 Court fees are to be refunded in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

13 All concerned will act on production of a digitally signed copy of this order.

WAISHALI
SUSHIL
WAGHMARE
Digitally signed
by WAISHALI
SUSHIL
WAGHMARE
Date:
2022.10.11
17:36:52
+0530

(R.I. CHAGLA, J.)