

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL SUTT NO.46 OF 2014

National Bank for Agriculture & Rural Development .. Plaintiff
Vs.
Saral Enterprises and Ors. .. Defendants

ALONG WITH
SUTT NO.577 OF 2009
SUTT NO.1151 OF 2011

Jayanand Khira & Co. Pvt. Ltd. and Anr. .. Plaintiffs
Vs.
Chittaranjan Damodardas Shah (*Deleted*)
Dr. Viral C. Shah and Ors. .. Defendants

And
Sachin C. Shah and Ors. .. Prop. Defendant

ALONG WITH
SUTT NO.1438 OF 2011

Chitranjan Damodardas Shah and Ors. .. Plaintiffs
Vs.
Chanchalben Murji Chheda and Ors. .. Defendants

ALONG WITH
SUTT NO.2500 OF 2012

White Rose CHS Ltd. and Ors. .. Plaintiffs
Vs.
Khira Nagar Co-op. Housing Societies
Association Ltd. and Ors. .. Defendants

ALONG WITH
SUTT NO.2211 OF 2011

Chanchalben Murji Chheda and Ors. .. Plaintiffs
Vs.
Viral Hotel and Theaters Pvt. Ltd. and Ors. .. Defendants

ALONG WITH

NOTICE OF MOTION NO.2650 OF 2011 IN SUIT NO.2211 OF 2011

Murji R. Chheda and Ors.

.. Applicants

Mr. Shaqeeb Shaikh, with Ms. Huda Diamondwala, i/by Diamondwala & Co., for the Plaintiff in S/577/2009 and S/1151/2011; for Defendant No.3 in COMS/46/2011; for Defendant Nos.5 and 6 in S/2211/2011; for Defendant Nos.13 and 14 in S/2500/2012 and for Defendant Nos.9 and 10 in S/1438/2011.

Mr. Bipin Joshi, with Ms. Vedanshi Shah, for Defendant Nos.1, 2, 3, 5 and 6 in S/577/2009; for Defendant Nos.1 to 5 in S/1151/2011; for Defendant Nos.1 to 4 in S/2211/2011; for Defendant Nos.8, 9(a) and 10 to 12 in S/2500/2012 and for Plaintiffs in S/1438/2011.

Ms. Mamta Sadh, i/by Mr. Sudhakar Lakhani, for Defendant Nos.7(a), 7(b), 8 and 10 to 14 in S/577/2009; for the Plaintiff in S/2211/2011; for Defendant Nos.1, 2, 3(a) and 3(b) and 4 to 8 in S/1438/2011.

Mr. Himanshu Takke, AGP for Defendant No.9 in S/1151/2011 and for Defendant No.17 in S/2500/2012.

Ms. Pinky Bhansali for Defendant No.18 in S/577/2009; for Defendant No.7 in S/1151/2011 and S/2211/2011 and for Defendant Nos.1 to 7 in S/2500/2012.

Ms. Dhruti Kapadia, with Ms. Pooja Yadav, for Defendant No.8 in S/1151/2011 and for Defendant No.5 in COMS/46/2014.

Mr. S.P. Bharti for the Plaintiff in COMS/46/2014.

Mr. Ranjeev Carvalho, with Mr. Gobinda C. Mohanty, i/by Mohanty & Associate, for Defendant Nos.1, 2(a) and 2(b) in COMS/46/2014.

Mr. Amit Shastri, AGP for Defendant No.6 in COMS/46/2014.

CORAM : A. K. MENON, J.

DATE : 27TH JANUARY, 2022.

[THROUGH VIDEO CONFERENCE]

P.C. ,

COMMERCIAL SUIT NO.46 OF 2014

1. On behalf of defendant nos.1, 2(a) and 2(b), Mr. Carvalho states and so does Mr. Mohanty that they have complied with all obligations under the consent terms dated 26th February 2015 filed before the Supreme Court in Petition for Special Leave to Appeal (C) No.36948 of 2013. It is therefore contended that there is nothing further that defendant nos.1, 2(a) and 2(b) have to do. Mr. Bharti has disputed this statement. According to Mr. Carvalho, defendant no.3 is now required to execute a conveyance. Written statement on behalf of defendant no.3 is already on record.

2. Defendant nos.1, 2(a) and 2(b) are stated to be filing written statement today.

3. As far as defendant no.4 is concerned, the society has not filed written statement. Ms. Kapadia, appearing on behalf of defendant no.5 states that there is no occasion for MCGM to file a written statement since the suit does not seek specific relief against defendant no.5–Corporation. In view thereof, she states that she does not intend to file written statement.

4. Defendant no.6 being State has filed a written statement dated 13th October 2015.

5. Time to file written statements of the defendants, who are yet to do so, is extended upto 5th February 2022.

6. Meanwhile, it is clarified, the statement made by Mr. Mohanty on behalf of defendant nos.1, 2(a) and 2(b) in the order dated 20th January 2022, that defendant no.3 is now required to perform pursuant to settlement and demarcation has to be carried out by defendant no.3.

7. In view thereof, list the suit for framing issues on 10th February 2022.

SUIT NO.577 OF 2009

1. Mr. Joshi states that defendant nos.5 and 6 do not wish to file written statements.

2. Defendant nos.9(a) and 9(b), who are the heirs of deceased defendant no.9, also have not yet filed written statement. Mr. Lakhani has no instructions today. It is made clear that if no instructions are obtained by next date, this suit would be transferred to the list of undefended suits as far as defendant nos.9(a) and 9(b) are concerned.

3. List the Suit on 10th February 2022.

SUIT NO.1151 OF 2011

1. Ms. Kapadia, appearing on behalf of defendant no.8 undertakes to ensure that written statement is filed today since it is ready. She undertakes to serve copies of the written statement upon all the parties by 29th January 2022. Statement is accepted.

2. Mr. Shaikh states that an affidavit-of-documents will be filed within a period of two weeks from today. He further states that Notice of Motion No.1558 of 2011 is pending. Notice of Motion No.1558 of 2011 is not listed today, however Mr. Shaikh. has instructions to submit that plaintiff is not pressing the reliefs in the motion, subject to reserving all rights of the plaintiff in the suit.

3. Accordingly, I pass the following order :-

- (i) Notice of Motion No.1558 of 2011 is disposed, reserving right of the plaintiff to pursue all reliefs in the suit.
- (ii) Since defendant nos.6 and 9 have not filed written statement, the suit will now proceed as an undefended suit against these defendants.
- (iii) Defendant no.8 to file its written statement on or before 1st February 2022.
- (iv) All parties are directed to exchange affidavits-of-documents within a period of three weeks from today. Inspection of all documents shall also be offered within the aforesaid period of three weeks. Parties shall exchange statements of admission and denials of each others documents within a period of two weeks thereafter.
- (v) Meanwhile, the correct number of the Motion shall be

mentioned in the order dated 20th January 2022, which shall be corrected and uploaded.

(vi) List the Suit for framing of issues on 10th February 2022.

SUIT NO.2211 OF 2011

1. Defendant no.8 is not represented today. Ms. Bhansali, appearing on behalf of defendant no.7 has undertaken to file written statement on or before 27th January 2022 i.e. today. However, Mr. Lakhani, appearing on behalf of the plaintiffs states that he has not been served with the written statement.

2. Accordingly, time to file written statement is extended upto 29th January 2022. If written statement is not filed within the stipulated time, the suit shall stand transferred to the list of undefended suits as against defendant nos.7 and 8.

3. On behalf of defendant no.2(a), who has been brought on record upon demise of original defendant no.2, Mr. Joshi undertakes to file vakalatnama within one week from today. In the event, vakalatnama is not filed on behalf of defendant no.2(a), the suit shall be treated as undefended suit and would be transferred to the list of undefended suits.

4. Mr. Joshi, on instructions, states that defendant no.2(a) will adopt the written statement filed by original defendant no.2. Statement is accepted.

5. In view thereof, the parties are directed to exchange affidavits-of-

documents within a period of three weeks from today. Inspection of all documents shall also be offered within the aforesaid period of three weeks. Parties shall exchange statements of admission and denials of each others documents within a period of two weeks thereafter.

6. List the Suit for framing of issues on 10th February 2022.

NOTICE OF MOTION NO.2650 OF 2011 IN SUIT NO.2211 OF 2011

This motion is stated to be pending. Mr. Lakhani states that there is no ad-interim order passed in the motion. The record indicates that this motion has not been moved for any ad-interim relief. No ad-interim relief granted despite an appeal having been filed. However, Mr. Lakhani reserves his right to make submissions only in the suit and therefore he does not press this motion. Accordingly, motion is disposed as infructuous.

(A.K. MENON, J.)