

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

INTERIM APPLICATION NO.4796 OF 2022

IN

SUIT NO.1005 OF 2011

Dreamz Dwellers LLP ...Applicant

In the matter between

Malad Kokil CHS Ltd. ...Plaintiff

vs.

Modern Construction Co.Pvt.Ltd. And Ors. ...Defendants

Mr. Pheroze Mehta a/w. Mrs. Rati Patni, Mr. Shekhar Bishnoi i/b.
M/s. Wadia Ghandy & Co., for the Applicant and for Defendant Nos.
1 to 5.

Mr. Nishant Sasidharan a/w. Mr. Tanjul Sharma i/b.Dhruve
Liladhar & Co., for the Plaintiff.

Mr. Sandeep D. i/b. Mr. Prakash Mahadik, for Defendant No. 6.

CORAM : N. J. JAMADAR, J.

DATE : DECEMBER 01, 2022

P.C.:

1. Heard the learned counsel for the applicant.
2. This application is taken out to implead the applicant as a party defendant in substitution of the original defendant No. 5 Skyscraper Realtors Private Limited.
3. The substance of the application is that Skyscraper Realtors Private Limited, defendant No. 5, merged with Keystone Realtors Private Limited in accordance with an order dated 10th October, 2014 passed by this Court, inter alia, in Company Scheme Petition No. 365 of 2014.

4. Subsequently, under a Deed of Assignment dated 20th March, 2018 executed between Keystone Realtors Private Limited and the applicant, Keystone Realtors Private Limited transferred and assigned its rights, title and interest in the property and development rights of the property along with benefits and entitlement under the said agreement in favour of the applicant. It is further averred that following the Deed of Assignment, a Deed of Confirmation came to be executed between defendant No. 4 and the applicant.

5. In substance, the applicant claims to be the assignee of the interest of Skyscraper Realtors Private Limited, the original defendant No. 5. Since the interest of defendant No. 5 has purportedly devolved upon the applicant pursuant to an assignment, the application stands allowed under the provisions of Order 22 Rule 10 of the Code of Civil Procedure, 1908. The defendant No. 5 is permitted to be brought on record in substitution of defendant No. 5 Skyscraper Realtors Private Limited.

6. Since the defendant Nos. 1 to 5 have already filed a common written statement, the applicant, upon impleadment as defendant No. 5, may take defences appropriate to its character as the assignee of defendant No. 5 only.

7. The plaintiff shall amend the plaint within a period of one

week.

8. Re-verification dispensed with.

9. The applicant/defendant No. 5, post the amendment in the plaint may file an additional written statement to take defences appropriate to its character as the assignee of the interest of defendant No. 5 only, within two weeks thereafter.

10. Application disposed.

11. At this stage, the learned counsel for defendant No. 6 Sundarvan S4 Co-operative Housing Society Limited invites attention of the Court to an order passed by the Appeal Bench in Appeal No. 95 of 2013 in Notice of Motion No. 1359 of 2011 in Suit No. 1005 of 2011, directing the transfer of LC Suit No. 2348 of 2010 then pending in Bombay City Civil Court to this Court and to decide the same along with instant Suit No. 1005 of 2011.

12. List this suit along with LC Suit No. 2348 of 2010, then pending in Bombay City Civil Court, if transferred, on 5th January, 2023.

13. In the event record and proceeding of LC Suit No. 2348 of 2010 are not yet transferred from Bombay City Civil Court, the Registry to get the same transferred from Bombay City Civil Court and thereafter list the same along with the instant suit.

(N. J. JAMADAR, J.)