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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO.1343 OF 2023

IN

COMMERCIAL FIRST APPEAL NO.13 OF 2022

Western Agri Food Park Pvt. Ltd. and Ors.Applicants/Appellants
Vs.

M/s. Rachana Developer and Ors.Respondents

Ms. Bijal Vora a/w. Mr. Pranav Nair i/b. Parinam Law Associates for
applicants/appellants.

Mr. Girish Godbole, Senior Advocate i/b. Mr. Kaustubh Thipsay and
Mr. Shon Gadgile for respondents.

**CORAM : K. R. SHRIRAM &
RAJESH S. PATIL, JJ.**

DATED : 4th MAY 2023

PC. :

1 Counsels tendered minutes of order signed by the advocates,
which is taken on record and marked "X" for identification. The same reads
as under :

MINUTES OF ORDER

1. The Interim Application has been filed seeking to restrain Respondents from in any manner acting upon the Order dated 16/01/2023 passed by the Ld. District Judge – 2 Pune, by which the Respondents have been permitted to withdraw an amount of Rs.15,00, 00,000/- (Rupees Fifteen Crores Only) by invoking Bank Guarantee submitted by the Applicants. The Applicants have also sought an Order directing the Respondents to furnish security in the form of a Bank Guarantee or in any other form as this Hon'ble Court deems fit in order to secure the amount amounting to Rs.11,26,90,411/- (Rupees Eleven Crores Twenty-Six Lakhs Ninety Thousand Four Hundred Eleven Only) and a further order restraining the Respondents and/or their agents, servants, representatives or assigns from invoking the Bank Guarantee of Rs. 15,00,00,000/- (Fifteen Crores Only).

2. On 13.02.2023, when this matter was listed, this Court passed the following Order :

"At the outset, Mr. Godbole, raised an issue of

maintainability of this application. At the same time, on the suggestion made by the Court, Shri Godbole, without prejudice to rights and contentions of Respondents, requested the matter be stood over to 15th February, 2023 to enable him to take instructions as to how Respondents would secure for the amount of Rs.15 Crores that is withdrawn.

Mr. Godbole, gives assurance to the Court that though the Pay Order/ Demand Draft has been issued by the bank on encashment of the bank guarantee, the amount has not been touched and up to a sum of Rs.11,26,90,411/- will not be touched without the leave of the Court.

Stand over to 15th February, 2023.”

The aforesaid order has been continued from time to time and is continuing till today.

3. In pursuance of the above, the Respondents filed an Affidavit cum Undertaking dated 27/02/2023 thereby agreeing to offer as security all that piece and parcel of land admeasuring 00H 80R bearing Survey No. 31/2A/1/1/4 situated at Village: Manjri (BK), Taluka: Haveli, District: Pune (**“said property”**), in place of the earlier property, i.e. the units comprised in Rachana House and further undertaking that the Respondents shall not alienate and / or create third party interest in respect of the said property, without the leave of this Hon’ble Court and till the disposal of the captioned Commercial Appeal filed by the Applicants / Appellants, so as to secure the rights of the Appellants in the event that the Appellants succeed in the captioned Commercial Appeal. In the affidavit it is also stated that the said property is not mortgaged to any bank or other financial institution or any interest/encumbrance has been created which shall prejudice the rights of the Appellants. The said property stated above is jointly owned by Mr. Nitin Bhanagay, Mr. Vinay Kalbhor, Mrs. Manjusha Bhanagay & Mrs. Sheetal Kalbhor.

4. The Applicants accept the said property as security, subject to a similar undertaking being provided by Mrs. Bhanagay & Mrs. Kalbhor, being the joint owners. The Respondents have placed on record, two Affidavits dated 25th April, 2023 filed by Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor whereby a similar undertaking has been made by Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor.

5. In view of the above, the Applicants herein have no objection to the Respondents withdrawing the amount of Rs. 11,26,90,411/- in light of the aforesaid undertakings

given by the Respondents and Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor.

6. Interim Application is disposed of in the above terms.

7. No order as to costs.

8. Liberty to apply and initiate appropriate proceedings in the event there is breach of the undertakings given by the Respondents and/or Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor with respect to the said property and/or the present Order.

2 For ease of reference, the same is also scanned and reproduced hereinbelow :

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1343 OF 2023
IN
COMM. FIRST APPEAL NO. 13 OF 2022

Western Agri Food Park Private Limited & ors.Appellants

Versus

M/s Rachana Developers & ors.Respondents

MINUTES OF ORDER

1. The Interim Application has been filed seeking to restrain Respondents from in any manner acting upon the Order dated 16/01/2023 passed by the Ld. District Judge - 2 Pune, by which the Respondents have been permitted to withdraw an amount of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) by invoking Bank Guarantee submitted by the Applicants. The Applicants have also sought an Order directing the Respondents to furnish security in the form of a Bank Guarantee or in any other form as this Hon'ble Court deems fit in order to secure the amount amounting to Rs. 11,26,90,411/- (Rupees Eleven Crores Twenty-Six Lakhs Ninety Thousand Four Hundred Eleven Only) and a further order restraining the Respondents and / or their agents, servants, representatives or assigns from invoking the Bank Guarantee of Rs. 15,00,00,000/- (Fifteen Crores Only).

2. On 13.02.2023, when this matter was listed, this Court passed the following Order :

"At the outset, Mr. Godbole, raised an issue of maintainability of this application. At the same time, on the suggestion made by the Court, Shri Godbole, without prejudice to rights and contentions of Respondents, requested the matter be stood over to 15th February, 2023 to enable him to take instructions as to how Respondents would secure for the amount of Rs.15 Crores that is withdrawn.

Mr. Godbole, gives assurance to the Court that though the Pay Order/ Demand Draft has been issued by the bank on encashment of the bank guarantee, the amount has not been touched and up to a sum of Rs.11,26,90,411/- will not be touched without the leave of the Court."

Stand over to 15th February, 2023."

The aforesaid order has been continued from time to time and is continuing till today.

3. In pursuance of the above, the Respondents filed an Affidavit cum Undertaking dated 27/02/2023 thereby agreeing to offer as security all that piece and parcel of land admeasuring 00H 80R bearing Survey No. 31/2A/1/1/4 situated at Village: Manjri (BK), Taluka: Haveli, District: Pune ("**said property**"), in place of the earlier property, i.e. the units comprised in Rachana House and further undertaking that the Respondents shall not



alienate and / or create third party interest in respect of the said property, without the leave of this Hon'ble Court and till the disposal of the captioned Commercial Appeal filed by the Applicants / Appellants, so as to secure the rights of the Appellants in the event that the Appellants succeed in the captioned Commercial Appeal. ^{In the affidavit it is also stated that} The said property is not mortgaged to any bank or other financial institution or any interest/encumbrance has been created which shall prejudice the rights of the Appellants. The said property stated above is jointly owned by Mr. Nitin Bhanagay, Mr. Vinay Kalbhor, Mrs. Manjusha Bhanagay & Mrs. Sheetal Kalbhor.

4. The Applicants accept the said property as security, subject to a similar undertaking being provided by Mrs. Bhanagay & Mrs. Kalbhor, being the joint owners. The Respondents have placed on record, two Affidavits dated 25th April, 2023 filed by Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor whereby a similar undertaking has been made by Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor
5. In view of the above, the Applicants herein have no objection to the Respondents withdrawing the amount of Rs. 11,26,90,411/- in light of the aforesaid undertakings given by the Respondents and Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor .
6. Interim Application is disposed of in the above terms.
7. No order as to costs.

 

8. Liberty to apply and initiate appropriate proceedings in the event there is breach of the undertakings given by the Respondents and/or Mrs. Manjusha Nitin Bhanagay & Mrs. Sheetal Vinay Kalbhor with respect to the said property and/or the present Order.

Dated this 4th day of May, 2023.



Advocate for the
Applicants



Advocate for the
Respondents

3 Order in terms of minutes of order.

4 All statements are accepted as undertakings to this Court and
all undertakings are also accepted.

5 Registry to take on record the affidavits referred to in paragraph 4 of the minutes of order.

6 Interim application accordingly stands disposed.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)