

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1348 OF 2020****WITH****WRIT PETITION NO. 2032 OF 2018**

Girish Shah and Anr.

Applicants

.. /Petitioners

Versus

Gharonda Construction Pvt. Ltd. and Ors.

.. Respondents

.....

- Mr. Jitendrakumar G. Damani for Applicants / Petitioners

- None for Respondents

.....

CORAM : MILIND N. JADHAV, J.**DATE : JANUARY 09, 2023.****P.C.:**

1. Heard Mr. Damani, learned Advocate for Applicants / Petitioners.

2. Present Interim Application has been filed for restoration of W

24.03.2017 passed by the Bombay City Civil Court in Chamber Summons No. 429 of 2010 in S.C.Suit No. 3261 of 2007 preferred by the Petitioners. By the said Chamber Summons Petitioners who are Plaintiffs in S.C. Suit No. 3261 of 2007 sought an amendment of the suit plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “C.P.C.”) seeking impleadment of the Secretary / Chairman, New Renu Co-operative Housing Society Limited as Defendant No.4 to the suit and also sought consequential amendments.

6. Admittedly, Petitioner No.2 was a Director of Defendant No.1 Company. Both Petitioners entered into a Development Agreement with the Defendant No.1 company. The Development Agreement dated 13.07.2022 is at page No.45 of the Petition. The executors to the agreement are the Petitioners and Defendant Nos.1, 2 and 3 only. The dispute in the suit filed by the Petitioners before the Trial Court pertains to removal of Petitioner No.2 as Director of Defendant No.1 company which was challenged by the Petitioners.

7. After going through the record, the learned Trial Court has held that admittedly there is no privity of contract of the proposed Defendant No.4 Society with the Plaintiffs i.e. the Petitioners. Before the learned Trial Court the Petitioners were not in a position to place any material on record save and except the averments made by the Petitioners in their Application as to why the proposed Defendant No.4

Society was a proper and necessary party to the Suit.

8. Perusal of the record and pleadings in the plaint clearly indicate that there is a dispute between the Petitioners and the Defendant Nos. 1 to 3 with respect to the removal of Petitioner No.2 as Director of Defendant No.1, acquisition of the right of development along with T.D.R. and F.S.I. in respect of the property mentioned in the Development Agreement and allegations of forgery and fabrication alleged by the Petitioners against Defendant Nos. 2 and 3.

9. Record indicates that complaint has been filed in Vile Parle Police Station in respect of the issue of forgery, fabrication and creation of false record. The reliefs in the suit filed by the Petitioners before the Trial Court have been seen and are reflected in paragraph No.11 of the impugned order and they nowhere suggest that any relief has been sought or can be sought against the proposed Defendant No.4 Society.

10. Record further indicates that in the pleadings it has been mentioned by the Petitioners that substantive suit i.e. Suit No. 1883 of 2005 has already been instituted by Defendant Nos. 2 and 3 against Defendant No.4 society, though we are not concerned with the said Suit. What is required to be seen in the present case is that whether there was nexus of the Petitioners with the proposed Defendant No.4-Society. Since the Petitioners have not been able to show any nexus with proposed Defendant No.4-Society, save and except the averments

made in the pleadings and name of the Society appearing in one of the recital of the Development Agreement between the parties to the suit, I am inclined to dismiss the present Writ Petition. The order dated 24.03.2017 passed by the learned Bombay City Civil Court in Chamber Summons No. 429 of 2010 does not call for any interference and is sustained.

11. Writ Petition is disposed.

12. In view of the disposal of the Writ Petition, Interim Application No. 1348 of 2020 is also disposed of.

[MILIND N. JADHAV, J.]

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