

VRJ

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

WRIT PETITION NO.8901 OF 2017

Vipul Gopaldas Ashar & Anr. ... Petitioners

V/s.

Virendra Girdharilal Khandelwal ... Respondent

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RAMESH
JADHAV
Date:
2023.10.20
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**WITH
WRIT PETITION NO.8899 OF 2017**

Vipul Gopaldas Ashar & Anr. ... Petitioners

V/s.

Chandrakanta Narendra Khandelwal ... Respondent

**WITH
WRIT PETITION NO.8900 OF 2017**

Vipul Gopaldas Ashar & Anr. ... Petitioners

V/s.

Chandrakanta Narendra Khandelwal ... Respondent

Mr. Nikhil Wable with Ms. Bhoomi Upadhyay i/by
Jaykar Partners for the petitioners.

Ms. Anjali Neel Helekar with Subhash A. Abhyankar
with Ms. Yogita Tambe for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2023

P.C.:

1. By the impugned order, the Trial Court directed the plaintiff to value the suit as per section 6(xi)(a) of the Bombay Court Fees

Act.

2. It appears that the petitioners filed S. C. Suit No.1436 of 2013 seeking specific performance of agreement dated 15th February 2013. According to the petitioners, they were enforcing rights conferred under the provisions of Maharashtra Ownership Flats (Regulation of promotion of construction, sale, management and transfer) Act, 1963 (hereafter, “MOFA Act”, for short). The Trial Court rejected petitioners’ contention holding that the agreement which is the basis of suit was neither registered under the provisions of MOFA Act nor can be termed as agreement under the provisions of the act as it does not contain the ingredients as contemplated by section 4(1A) of the said Act.

3. On perusal of the agreement, it appears that the agreement was not in accordance with the provisions of the MOFA Act. The point involved in the petitioner is covered by judgment of this Court in **Maria Philomina Pereira vs. M/s Rodrigues Construction** reported in 1990 Mh.L.J. 445. This Court held that if an agreement executed under the provisions of MOFA Act is registered under section 4 of the Act, the provisions of the Act will be applicable.

4. On perusal of the agreement in question, it appears that it is neither registered under section 4 of the Act nor contain the terms as contemplated by section 4(1A) of the Act. Hence, there is no error of jurisdiction committed by the Trial Court.

5. The writ petitions are dismissed. No costs.

(AMIT BORKAR, J.)