

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

INTERIM APPLICATION NO.320 OF 2023

IN

SUIT NO.794 OF 2013

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR

Date: 2023.02.27
17:31:10 +0530

Viraj Properties and Real Estate
Private Limited

...Applicant

In the matter of

Matra Infra Project Private Limited

...Plaintiff

vs.

Oshiwara Mhada Gaondevi Complex

Co.Op.Housing Association Ltd. and Others

...Defendants

Mr. Anushul Anjarlekar i/b. Raval Shah & Co., for the Applicant.

Mr. Sahil Mahajan, for the Plaintiff.

Mr. Sandeep Bhagwat, for Defendant No.1.

Ms. Vaishali Sanghavi a/w. Mr. Mihir Aswani, Mr. Ameet Mehta i/b.

Solicis Lex, for Defendant Nos. 2 to 4.

Ms. Anuprita Nalawade a/w. Mr. Harsh Mehta i/b. Malvi

Ranchoddas & Co., for Defendant No. 5.

Ms. Shraddha Jadhav i/b. Mr. S.M. Suryawanshi, for Defdt. No. 6.

Ms. Sayli Apte a/w. Ms. Shreya Shah i/b. Mr. P.G. Lad, for Defendant
No. 7.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 22, 2023

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant has preferred this application to implead him as a party defendant to the suit and to disregard/reject the consent terms proposed to be executed, purportedly without the consent of the majority of the individual members of the defendant Nos. 1 to 6.

3. The driving force behind this application is the proposed consent terms executed between the plaintiff and defendant Nos. 1 to 6.

4. The applicant claims that the applicant had agreed to redevelop the suit project jointly with the plaintiff and a Memorandum of Understanding (MOU) was executed between the plaintiff and the applicant on 11th August, 2009. Subsequently, a Joint Venture Agreement (JVA) was executed between the plaintiff and the applicant in January, 2010.

5. The applicant alleges breach of the MOU and JVA by the plaintiff. Hence, he was constrained to invoke arbitration against the plaintiff.

6. The second limb of the application is that the resolution passed by the defendant Nos. 1 to 6 societies are not with the consent of the majority of the individual members of the said societies.

7. Evidently, on both the counts the application does not deserve to be entertained. The applicant may have a cause of action against the plaintiff in respect of inter se transactions between the

applicant and the plaintiff. It would be, however, a distinct and separate course of action. The fact that there was an independent contract inter se the plaintiff and the applicant does not imply that the applicant has a direct interest in the subject matter of the instant suit, which is instituted by the plaintiff challenging the termination of the Development Agreement executed by the defendant Nos. 1 to 6 in favour of the plaintiff. The applicant can very well work out the remedies against the plaintiff in an appropriate proceeding before the appropriate forum.

8. So far as the contention that the resolutions are not passed with the consent of the majority of the members of defendant Nos. 1 to 6 societies, the said challenge can be raised, if so advised, by the concerned members of the defendant Nos. 1 to 6 societies before an appropriate forum. By no stretch of imagination such contention furnishes a justifiable cause for the applicant to seek impleadment in the instant suit.

9. Hence, the application stands rejected.

(N. J. JAMADAR, J.)