

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

**IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 98 OF 2022
IN
COMM. SUIT NO. 1076 OF 2019**

ANJALI
TUSHAR
ASWALE

Digitally signed by
ANJALI TUSHAR
ASWALE
Date: 2023.05.02
16:21:15 +0530

Krishnan Anand & Anr .. Applicants (Orig. Plaintiffs)
IN THE MATTER OF
Sunil K. Anand & Anr ..Orig. Plaintiffs

Versus

Siroya FM Constructions
Pvt Ltd & 2 Ors .. Defendants
And
Hinjewadi Infradevelopment
Pvt Ltd & Ors ..Respondents

Mr.Anil G. Shah, the *Plaintiff / Applicant* is present.

Ms.Prachi Khandge, with *Ms.Swati Chheda i/b M. P. Vashi Associates, Advocates for Respondent Nos.1 to 3.*

Dr.Virendra Tulzapurkar, *Senior Advocate with Manjiri Parasnis, for Respondent Nos.4 to 6 in IA.98/22.*

Mr. Rohaan Cama with *Anish Karande, Mahtab Katariay, Pooja Jhaveri i/b Katariya & Associates, Advocates for Respondent No.7 in IA.98/22.*

CORAM: B. P. COLABAWALLA, J

**Reserved on:- APRIL 3, 2023
Pronounced on:- APRIL 28, 2023**

P. C.

1 The above Interim Application is filed by the Applicants (Original Plaintiffs) seeking the following reliefs:-

- a) *"That This Hon'ble Court be pleased to hold that all transactions carried out by the Respondents (including Respondent No.4 Siroya FM Infra Development Pvt Ltd now known as Hinjewadi Infradevelopment Pvt. Ltd) with respect to the Plot No R-31 admeasuring 90,860 Square meters [28 Acres] Rajiv Gandhi Info Tech Park Phase -III 'situated in Hinjewadi pune, documents as **per Exh-E at page 62 to 97 in gross violation** of order dated 08th July, 2019 [Exh-A] passed in Notice of Motion No. L 1031 of 2019 as confirmed by **Appeal bench** Order dated 5th September, 2019 passed in Appeal No. 428 of 2019 [Exh-B], by this Hon'ble Court and are void ab initio/non-est and/or liable to be set aside.*
- b) *This Hon'ble Court be pleased to direct the Respondents to jointly and/or severally **deposit an** amount of Rs. Rs.70,53,62,840 until 19th September 2020 and thereafter till date, monies accepted by the Respondent No.4 for Hingewadi Infra development Pvt Ltd in defiance of order dated 8th July 2019.*
- c) *This Hon'ble Court be pleased to direct the Respondents to file a disclosure of all transactions carried out by them from and on 08th July, 2019 and the amounts received/ to be received by them from the 'Hinjewadi Project" situated in Plot No R-31 admeasuring 90,860 Square meters [28 Acres] Rajiv Gandhi Infor-Tech Park Phase -III 'situated in Hinjewadi pune and retain all such receivables with this Hon'ble Court*
- d) *This Hon'ble Court be pleased to strike out the defense of defendants herein and dismiss their counter claim for the aforesaid violation of the Order dated 8th July, 2020*
- e) *That this Hon'ble be pleased to strike out the defense and **dismiss the counter claim** presented by the Defendants.*
- f) *Seeks permission to take back/withdraw IA.2 of 2020 & IA.3 of 2020 which are in the high court records and not yet numbered."*

2 All the aforesaid reliefs are predicated on the ground that all transactions carried out by the Respondents (including

Respondent No.4) with respect to Plot No. R-31 admeasuring 90,860 Square meters [28 Acres] situated in Hinjewadi, Pune (for short the “**Hinjewadi Property**”) are in violation of the order dated 8th July 2019, and which order has been confirmed by the Division Bench vide its order dated 5th September 2019. Respondent Nos.1 to 3 in the above Interim Application are Defendant Nos.1 to 3 in the above Suit. Respondent Nos.4, 5, 6 and 7 are not party Defendants. For the sake of convenience, I shall refer to Respondent Nos.1 to 3 herein as the Defendants and Respondent Nos. 4 to 7 as the Respondents.

3 Since it is the case of the Applicants that the transactions carried out by the Defendants and the Respondents, including Respondent No.4, in relation to the Hinjewadi Property is in violation of the order passed by this Court on 8th July 2019, it would only be appropriate to set out the operative part of the said order which reads thus:-

“14.In the circumstances, I am inclined to grant ad-interim relief and the following order is passed:

(a) pending the hearing and final disposal of the present suit, defendants are directed to deposit an amount of Rs. 4,25,00,000/- within four weeks from today with the Prothonotary and Senior Master in order to secure the interest/claim of plaintiff;

(b) pending the hearing and final disposal of the

present suit, defendants are directed to disclose all their assets including movable, immovable, tangible and intangible, shares, debentures, fixed deposit, bank account details, receivables, number of ongoing project and unsold flats and receivables therein etc. on affidavit to be filed within a period of three weeks from today;

(c) pending the hearing and final disposal of the present suit, defendants, their servants, agents, administrators and assigns are restrained by an order of injunction from creating any third party rights in respect of any of their properties to be disclosed and even if not disclosed. This would also include their interest in other projects or companies either as share holding or otherwise;

(d) pending the hearing and final disposal of the present suit, defendant nos.2 and 3 are directed to disclose on oath their directorship in various companies as well as share holding therein;

(e) defendants shall also file copies of their annual returns including balance sheet and profit and loss account duly certified as true copy by the Chartered Accountant for the period beginning 01.04.2012 until 31.03.2019."

4 From the operative part of this order, it is clear that the Defendants were directed to deposit an amount of Rs.4,25,00,000/- within four weeks from the said date with the Prothonotary and Senior Master. This deposit has been made on 24th July 2019.

5 Thereafter, the Defendants were directed to disclose all their assets, including movable, immovable, tangible and intangible, shares, debentures, fixed deposits, bank account details, receivables, number of ongoing projects and unsold flats and receivables therein etc on an affidavit, which was to be filed within a period of three weeks from the said date.

6 The violation that is alleged is really of paragraph 14 (c) of the order dated 8th July 2019. Paragraph 14 (c) restrains the Defendants from creating any third-party rights in respect of any of their properties to be disclosed and even if not disclosed. This would also include their interest in other projects or companies either as shareholding or otherwise.

7 Mr. Shah - Applicant No.2 submitted that Respondent No.4 is a company in which Defendant Nos.2 and 3 have a substantial shareholding. He submitted that Respondent No.4 originally consisted of two Directors i.e. Defendant No.2 and Defendant No.3 who had acquired the Hinjewadi Property on a leasehold basis from MIDC. Thereafter, Defendant Nos.2 and 3 transferred 50% of their shareholding in Respondent No.4 to one Mr. Atul Chordia. Mr. Shah submitted that considering the fact

that the Hinjewadi Property was bought when Defendant Nos.2 and 3 were 100% shareholders of Respondent No.4, coupled with the fact that even today they hold 50% shareholding of the said 4th Respondent – Company, the injunction order passed on 8th July 2019 would also restrain Respondent No.4 from creating any third party rights in the Hinjewadi Property. In other words, Mr. Shah submits that Defendant No.2 and Defendant No.3 are 50% owners of the Hinjewadi Property.

8 I have heard Mr. Shah as well as Mr. Vashi and Dr. Tulzapurkar on this aspect.

9 The facts in the case would reveal that initially, the share distribution of Respondent No.4 was 50% each between Defendant No.2 and Defendant No.3 respectively. However, since the cost of the project of Respondent No.4 was enormous and required huge funding, Defendant No.3 and the late Fatesh Mirchandani (Original Defendant No.2) sold 50% of their shareholding to one Mr. Atul Chordia way back in the year 2010. From 2010 onwards, Mr. Chordia is managing Respondent No.4. Respondent No.4 has in fact filed an affidavit in this Court and has stated that the Plaintiff has wrongly impleaded Respondent Nos.4

to 6 and that these Respondents have not committed any breach of the order passed by this Court. In this regard, Respondent No.4 has correctly submitted that the order dated 8th July 2019 is passed against Defendant Nos.1 to 3 restraining them from *inter alia* creating third party rights in relation to their assets and their assets alone. The said order is not applicable to Respondent Nos.4 to 6. Respondent No.4 is a Private Limited Company in which Defendant Nos.2 and 3 are merely shareholders to the extent of 25% each. Once this is the factual situation, I prima facie do not find merit in the argument canvassed by Mr. Shah that any transaction entered into by Respondent No.4, and of which Defendant Nos.2 and 3 are shareholders, would amount to a violation of the order dated 8th July 2019. To my mind, Mr. Shah is confusing the concept of owning shares in the company with owning the assets of the said company. Merely by owning shares in the company, the shareholders do not become the owner of the assets of the company. This is now a well settled proposition as laid down in the decision of the Hon'ble Supreme Court in the case of ***Mrs Bacha F. Guzdar v/s the Commissioner of Income Tax, Bombay*** [AIR 1955 SC 74].

10 I must mention that it is not the case of Mr. Shah that

Defendant Nos.2 and 3 had alienated their shareholding in Respondent No.4 after the passing of the order dated 8th July 2019. To my mind, the mistake that Mr. Shah makes, is that he equates the assets of Respondent No.4 as that of Defendant Nos.2 and 3. It is on this basis that he alleges that the order dated 8th July 2019 has been violated. As mentioned earlier, it is well settled that the assets of Respondent No.4, and which is a separate legal entity in law, cannot be equated or considered as the assets of Defendant Nos.2 and 3. Defendant Nos.2 and 3 are merely shareholders of the 4th Respondent company, and that too only to the extent of 50%. Once this is the factual position, then, I am afraid that the reliefs sought for in the above Interim Application cannot be entertained. I say this because all the reliefs claimed in the above Interim Application are predicated on the basis that third party rights and/or interests have been created in the Hinjewadi Property in breach of the order passed by this Court on 8th July 2019. Once I have held that the Hinjewadi Property is not a property belonging to Defendant Nos.2 and 3, then, there can be no question of there being any violation of the order 8th July 2019 which restrained Defendant Nos.2 and 3 from creating any third party rights in respect of any of their properties to be disclosed or even if not disclosed and would also include their interest in other

projects and companies either as shareholding or otherwise.

11 In these circumstances, I find no merit in the aforesaid application and it is accordingly dismissed. However, there shall be no order as to costs.

12 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J].