

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4765 OF 2023

Moreshwar Dashrath Bhoir

.. Petitioner

Versus

Vaibhavi Builders and Developers and Ors.

.. Respondents

.....

- Mr. Prashant P. Chawan i./by Mr. Ravindra R. Chile, Advocates for Petitioner.
- Mr. Rohit D. Joshi, Advocate for Respondent No.1.

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 29, 2024

P.C.:

1. I have heard Mr. Chawan, learned Advocate for Petitioner and Mr. Joshi, learned Advocate for Respondent No.1 on 13.02.2024 as also today.

2. The Writ Petition was kept today to consider the possibility of parties reconciling their disputes. Though I must say that both Mr. Chawan and Mr. Joshi have taken earnest efforts to reconcile, which is evident from their submissions made before me today, but for some reason the reconciliation appears to have failed.

3. Be that as it may, in so far as the impugned order in the present Writ Petition is concerned and amended / additional reliefs sought for by Plaintiff i.e. Petitioner before me in his Application under Order VI Rule 17 read with Section 151 of the Civil Procedure Code,

1908 (for short '**CPC**') are concerned, Mr. Joshi, learned Advocate for Respondent No.1 i.e. Defendant No.1 – Developer would submit that the extent of 25% constructed area in the suit building i.e. six flats and one and half gala as per the terms and conditions of the Memorandum of Understanding dated 05.03.2008 followed by the Development Agreement and Supplementary Agreement have been kept as they are under the lock and key with the Respondent, being the share of the Plaintiff. He would submit that the remaining balance 75% i.e. 50% belonging to the Respondent No.1 – Developer and 25% belonging to Tulshiram Jana Bhoir i.e. Respondent No.3 already stands appropriated.

4. Mr. Chavan would submit that this Court be pleased to consider one specific prayer in the amendment application namely proposed prayer clause (c) wherein the Petitioner seeks compensation for not handing over possession.

5. In response to this submission, Mr. Joshi would submit that the subject property post its delayed construction is taken care of and looked after by Defendant No.1 on behalf of the Petitioner.

6. In view of the above, I am not inclined to pass any order on merits, as it may affect the substantive right of the Petitioner – Plaintiff in the trial before the Trial Court.

7. Needless to state that in view of the statement made by Mr.

Joshi and which is also reflected in paragraph No.6 of the order, save and except to correct that it should read as six flats and one and the half gala belonging to the Plaintiff being held by the Developer and he having not created any third party interest in it and will also not do so till the decision in the suit, the impugned order stands sustained.

8. Considering that the suit is filed in the year 2014, the Trial Court seized with the hearing of Special Civil Suit No.619 of 2014 is requested by this Court to determine, adjudicate and decide the said suit within a period of six months from today, strictly in accordance with law. All contentions of both the parties are expressly kept open.

9. In the meanwhile, it shall be also open to parties to reconcile their disputes if it is possible during the trial of the suit before the Trial Court without prejudice to their rights and contentions.

10. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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