

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 577 OF 2019

Bharat Mulji Khona

.. Applicant

Versus

M/s. Fiza Construction Company & Ors.

.. Respondents

.....

- Mr. Nishant Tripathi a/w Mr. Prasad Dani, Senior Advocate & Mr. Pranav Vaidya i/by M. Tripathi & Co for Applicant
- Ms. Pratibha Shelake for Respondent No. 1

.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 23, 2024

P. C.:

1. Mentioned out of turn at the time of rising.
2. Heard Mr. Tripathi, learned Advocate for Applicant and Ms. Shelake, learned Advocate for Respondent No. 1.
3. Mr. Tripathi has drawn my attention to the impugned order dated 04.01.2019 passed in the Application below Exh. 31 in Special Civil Suit No. 140 of 2008. Application below Exh. 31 was filed by Applicant (Org. Defendant No. 9) seeking rejection of Suit plaint on the ground that the Suit itself was not maintainable in view of the fact that it was a collusive Suit filed between the parties seeking specific performance of the agreement of the year 2006 in respect of the suit property of which Defendant No. 9 already had a decree in his favour dated 27.09.2005 in Special Civil Suit No. 85 of 2005. He would contend that parties entered into an agreement subsequent to the date

of decree and filed the present Suit in the year 2008 frustrating the decree in favour of Defendant No. 9. He would inform the Court that Special Darkhast No. 16/2008 was thereafter filed by Defendant No. 9 in the Executing Court which has allowed the said Darkhast proceedings resultantly leading to execution of a tripartite agreement dated 29.07.2008 wherein the suit plot has been transferred in the name of Defendant No. 9 by virtue of the said tripartite agreement executed between the parties. By virtue of the said tripartite agreement, the said Darkhast proceedings were disposed of by the Executing Court on 05.12.2012.

4. Mr. Tripathi in his usual fairness would submit that the tripartite agreement is executed between Defendant No. 9 i.e. Applicant on the one hand and CIDCO on the other hand and the Court Commissioner. He would submit that according to Applicant – Defendant No.9 all parties have been paid by Defendant No. 9. This is however refuted by Ms. Shelake vehemently.

5. Be that as it may, the Suit as filed between the parties will have to be determined in accordance with law. Since the Suit pertains to specific performance of the agreement between the parties thereto, the present CRA can be disposed of by directing the learned Trial Court to dispose of SCS No. 140/2008 as expeditiously as possible and in any

event within a period of six months from today positively without asking for any extension from this Court.

6. This order is passed in view of the peculiar facts of the present case before me. The title to the Suit property incidentally has been perfected by virtue of the tripartite agreement in favour of Defendant No. 9. The suit property which is the subject matter of specific performance is the same property in respect of which the title of Defendant No. 9 has been perfected by virtue of the tripartite agreement. Hence in view of these facts, I am inclined to ask the learned Trial Court to dispose of SCS No. 140/2008 as expeditiously as possible. If so required, learned Trial Court shall conduct hearing of the said Suit on a day to day basis.

7. It is clarified that the learned Trial Court shall not give adjournments to the parties unless they are absolutely necessary in case of urgency or emergency and grant of such adjournment shall be at the discretion of the learned Trial Court.

8. In view of the above observations, the impugned order dated 04.01.2019 is upheld. It is clarified that this Court has not expressed any opinion on merits of the matter. All contentions of the parties to the Suit are expressly kept open.

9. With the above directions, Civil Revision Application is disposed.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date: 2024.04.24
19:25:23 +0530