

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9453 OF 2019

M/s. Vishrut Enterprises Pvt Ltd
(formerly known as Vishrut Infotech Pvt Ltd) &
Anr.

.. Petitioners

Versus

Pankti Jignesh Goradia & Ors.

.. Respondents

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- Mr. Akhilesh Dubey a/w Mr. Amit Dubey i/by Troy Legal for Petitioners
- Mr. Sharique Nachan a/w Mr. Susmit Phatale, Mr. Somnath Kale i/by Mr. Susmit Phatale for Respondent No. 1
- Dr. Pravin Upadhyay for Respondent No. 5
- Mr. Ashwin Sanyal – Respondent No. 5 present

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 19, 2024

P. C.:

1. Heard Mr. Dubey, learned Advocate for Petitioners; Mr. Nachan, learned Advocate for Respondent No. 1 and Dr. Upadhyay, learned Advocate for Respondent No. 5.

2. There are 33 Respondents who are all flat purchasers. Mr. Dubey would submit that this Court without giving its imprimatur and *prima facie* opinion on the factual aspects governing the present case and without prejudice to the rights and contentions of all parties, should expedite the hearing of the Civil Suit pending before the learned Trial Court. According to him such an order would enure to the benefit of all parties concerned. Mr. Dubey makes this statement responsibly since in view of the *inter se* rights of the Petitioner who is the original land owner *vis-a-viz* the rights of Respondent No. 1 Developer, it would be appropriate if the learned Trial Court

adjudicates the *lis* between the parties rather than this Court passing any order on the facts of the present case in the interim which may affect the Trial. All that he would submit is that the Suit having been filed in the year 2017 has not yet commenced. He has drawn my attention to the impugned order passed in Application below Exh. 146 and more specifically paragraph No. 14 thereof and would submit that substantive findings are returned by the learned Trial Court without adjudication and without allowing the Plaintiff to lead evidence. Hence the said findings deserve to be quashed and set aside and the trial should be allowed to commence.

3. I have heard Mr. Upadhyay, learned Advocate for Respondent No. 5. There are 33 Respondents. Rest of the Respondents are also in the same shoes as Respondent No. 5 as they are all flat purchasers. His grievance is that the agreement executed between Respondent No. 1 and flat purchasers contains an arbitration clause. He would next submit that the development agreement between the Petitioner No. 1 (Org. Plaintiff) and Respondent No. 1 also contains an arbitration clause in the development agreement. Hence Mr. Upadhyay's contention is that the impugned order referring the disputes to arbitration is correctly passed.

4. *Prima facie*, after hearing the learned Advocates I am of the opinion that in so far as the development agreement between Petitioner / Plaintiff and Respondent No. 1 is concerned, none of the flat purchasers have any privity to the same. Though the intention of the learned Trial Court in passing the impugned order dated 30.07.2019 may be noble in order to expedite the *lis* between the parties, however the same cannot be thrust upon the parties. Here

is a landowner Plaintiff who has a development agreement with the Defendant i.e. Respondent No. 1. Their rights are spelt out therein. The Developer has breached the conditions in the agreement and alienated the Plaintiff's property i.e. share in favour of the flat purchasers admittedly. In that view of the matter, I have impressed upon Mr. Upadhyay that this Court will not be inclined to accept the order dated 30.07.2019 being thrust upon the Plaintiff. However considering the issue involved in the present case as also the fact that the flat purchasers are at the receiving end and they having paid substantial amounts to the Respondent No. 1 after borrowing the same from Axis Bank, I am of the opinion that Special Civil Suit No. 285/2017 should be directed to be disposed of as expeditiously as possible in the interest of justice of all parties and more specifically in order to obtain finality to the adjudication of the *lis* between the land owner and the Developer. There is clearly no nexus between the land owner Plaintiff & the flat purchasers. In fact both of them have been *prima facie* defrauded by the Respondent No. 1 – Developer. It is seen that the Developer has sold the share of flats belonging to the landowner Plaintiff without his consent to the flat purchasers, when he could not have done so under the Development agreement.

5. Mr. Nachan would however submit that some of the amounts received from the flat purchasers has been passed over by Respondent

No. 1 to Plaintiff. Be that as it may, all such issues shall be adjudicated by the learned Trial Court in the trial.

6. In view of the above observations and findings, the impugned order dated 30.07.2019 is unsustainable and therefore quashed and set aside. Resultantly Writ Petition stands allowed with a direction to the learned Trial Court to dispose of SCS No. 285/2017 as expeditiously as possible and in any event within a period of six months from today.

7. Needless to state that all contentions of parties are expressly kept open. Respondent No. 1 is warned by this Court to ensure that he shall not seek unnecessary adjournments in the Trial Court and any adjournments sought by Respondent No. 1 shall be denied by the Trial Court unless they are utmost necessary in case of any emergency or exigency.

8. Considering the distress of the flat purchasers in the present case, learned Trial Court is requested by this Court to ensure that the Suit is disposed of as expeditiously as possible and if so required, the learned Trial Court is directed by this Court to undertake hearing of the Suit proceedings on a day to day basis to ensure that there is finality to the *lis* between the parties at the earliest.

9. I am informed that the Suit proceeding before the learned Trial Court is slated on 23.04.2024. Parties are directed to place a server copy of this order before the learned Trial Court. Learned Trial Court shall take cognizance of this order and determine the schedule of hearing in the Suit proceedings by giving directions as per its discretion and convenience.

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

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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