

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3566 OF 2024

Udaan Construction Company.

.. Petitioner

Versus

Parijat Construction & Anr.

.. Respondents

.....

- Mr. N.P. Bhavsar, Advocate for Petitioner.
- Mr. Pravin Rhathwal i/b. Solicis Lex, Advocate for Respondent No. 2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 4, 2024.

P.C.:

1. On 20th June 2024 after hearing both the learned Advocates appearing for the Petitioner and Respondent No. 2, the following order was passed.

“1. Heard Mr. Bhavsar, learned Advocate for Petitioner and Ms. Murkudkar, learned Advocate for Respondent No.2 i.e. the newly proposed Defendant No.2 in the Suit proceedings.

2. Today, Respondent No.1 is not present.

3. At the outset, Ms. Murkudkar would submit that she has not received a copy of the Writ Petition which though has been served on the Society. Mr. Bhavsar, learned Advocate in his usual fairness has immediately given a copy to her in Court.

4. Ms. Murkudkar would submit that appropriate instructions shall be taken from the Society and filed her Vakalatnama alongwith Affidavit-in-Reply on or before the next date.

5. Mr. Bhavsar draws my attention to the impugned order dated 26.04.2023 which is appended at page No.50 of the Writ Petition and would submit that the Commercial Suit filed by the Applicant is in respect of recovery of amount from Defendant No.1 has been protracted and prolonged unnecessary. I agree with the submissions of Mr. Bhavsar.

6. I have impressed upon Mr. Bhavsar to consider early determination of the Commercial Suit before the learned Trial Court in a time bound manner so that the trial can be concluded. He would assured the Court that he would take appropriate instructions and inform the Court accordingly on the next adjourned date.

7. Ms. Murkudkar, learned Advocate for Respondent No.2 is directed to file her Affidavit-in-Reply, if any, if so desired on or before the next date.

8. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself after hearing the parties.

9. Stand over to 27th June, 2024.”

2. As delineated in the above order Mr. Bhavsar as also learned Advocate Mr. Rathwal appearing on behalf of Respondent No. 2 in their usual fairness would submit that both of them obtained instructions from their respective clients and are agreeable to the course suggested by this Court and as delineated in paragraph No. 8 of the above order. In addition thereto, Mr. Rhathwal, learned Advocate for Respondent No. 2 would submit that if it is possible for this Court certain further directions be passed which would enure to the benefits of the parties since the Respondent No. 2 is a Co-operative Housing Society. Mr. Rhathwal would submit that both the aforesaid twin suits

are between the same parties and they are pending before the Bombay City Civil Court with respect to the same cause of action. Hence, he would submit that if this Court directs the learned Trial Court to club both the suit proceedings together, it would avoid multiplication of trial as also decision on the same issue by two different courts.

3. Mr. Bhavsar endorses the submissions made by the Mr. Rhathwal and also informs the Court that if such a course of action is permissible, it will enure to the benefit of all the parties.

4. It is seen that one is Regular Civil Suit and one is Commercial Suit and therefore, both suits are in different courts. However, in view of the fact that both suits pertain to the same controversy between the parties as also one of the party involved in the suit is a Co-operative Housing Society, I am inclined to direct the learned PDJ of Bombay City Court to consider clubbing of both the suits together and assigning both suits to one particular Judge for joint / common trial. All contentions of the parties are expressly kept open. The Suits shall be disposed of in accordance with law. Both Suits are directed to be disposed of as expeditiously as possible and in any even within a period of one year from today.

5. In view of this order, the order challenging the impleadment in the present Writ Petition is quashed and set aside. The Petitioner is directed to carry out amendment and implead the Society as party in

the Suit proceedings before the trial Court.

6. Writ Petition is allowed in terms of prayer clause (a) which reads thus:-

"(a) This Hon'ble Court may be pleased to set aside the Impugned Order dated 26th April 2023 passed in Chamber Summons No. 1425 of 2023 in Commercial Suit No. 90 of 2022 by the Bombay City Civil Court at Dindoshi, Mumbai."

7. Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Talwalkar

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.09.09
14:24:36 +0530