

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 301 OF 2024

Laxmi Constructions

.. Applicant

Versus

Veena Vivek Dhapare & Ors.

.. Respondents

-
- Mr. Vineet B. Naik, Sr. Advocate a/w Mr. Akshay Kulkarni for Applicant

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 24, 2024

P. C.:

1. Heard Mr. Naik, learned Senior Advocate for Applicant.
2. Copy of the development agreement is not annexed to the Civil Revision Application (CRA) but the same has been placed before me today. Clause No. 5 along with Clause Nos. 28 and 29 of the Development Agreement has been shown to me by Mr. Naik. Present Civil Revision Application is filed by Defendant No. 1 whose partners were the signatories to the Development Agreement executed between the parties in the year 2017. Cause of action stated in the Suit plaint is that Plaintiffs would have a right of pre-emption in respect of any future development potential of the Suit property. However, Clause 5 read with Clause Nos. 28 and 29 of the Development Agreement speaks completely to the contrary. It concerns the three tenants on the said property and does not relate to future

development of the entire property. It is not the case of the Defendant before me that they are not ready and willing to abide by the terms and conditions of the Development Agreement. They wish to do so. The principal condition in the Development Agreement is that in case of any future development, the Developer shall part with 50% of the future potential in favour of the owners. In this view of the matter, Application is filed under O. 7, R. 11 of the CPC by Defendant No. 1 and 2 as the Suit proceeds on a completely incorrect premise and cause of action.

3. I have perused the Suit plaint which is at page Nos. 21-41 of the CRA and seen the cause of action as stated in paragraph Nos. 7, 12 and 14. If the cause of action in the Suit plaint is juxtaposed with clause 5, it is clearly seen that the said clause pertains to a pre-emptive right with respect to the three tenants who were on the suit property prior to development and in respect of those three tenants, right of pre-emption was granted to the owners. It is therefore *prima facie* seen that right of pre-emption has been wrongly construed by the Plaintiffs *qua* the entire development while filing the Suit proceedings.

4. In view of the above, an arguable case is made out by Mr. Naik for immediate stay of the impugned order dated 26.02.2024 as also to the proceedings before the Trial Court. I shall hear the Plaintiffs. Hence, the impugned order dated 26.02.2024 is stayed. Learned Trial

Court is directed not to proceed with SCS No. 102 of 2023 until the present CRA is determined.

5. In the meanwhile issue notice to Respondent Nos. 1 to 3 who are principal contesting Respondents i.e. the Plaintiffs. Humdast permitted. In addition to Court's notice, Applicant is directed to serve copy of the CRA along with copy of this order on the concerned Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Applicant.

6. Respondents are directed to remain present either by themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this CRA shall be heard and disposed of at the stage of admission in the absence of the Respondents.

7. Stand over to **7th August, 2024.**

[MILIND N. JADHAV, J.]

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by RAVINDRA
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