

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION NO. 508 OF 2024

Mahendra Mhatre

...Applicant

vs.

Udyam Kunj Co-operative Housing
Society Ltd.

...Respondent

Adv. Vishal Kanade a/w Adv. Triveni Jani and Adv. Duhita D. Desai	Advocate for the Applicant
Mr. Amogh Singh a/w Mr. Nirav Karia, Mr. Vikas Mishra i/by Mr. Bhavin Bhatia	for the Respondent

CORAM : S. M. MODAK, J.

DATE : 13th DECEMBER 2024

P. C. :-

1. Heard learned Advocate Shri Kanade for the Applicant/Developer also heard learned Advocate Shri Singh for Respondent No. 1-Society. Respondent Nos. 2 to 9 are the members of the Respondent No. 1-Society.
2. There are two suits pending in between both the Parties. The

details are as follows:-

(A) Suit No. 314 of 2015 filed by the Developer in which the Society is defendant No. 1. It is on page no. 17. The prayers are as follows:-

(i) He is seeking declaration about following documents about their legal character. Those documents are:-

(a) Development agreement dated 05.05.2004 which is registered.

(b) Supplementary development agreement dated 12.12.2008. There are also other reliefs, at page No. 43.

This suit was filed in this Court, but due to enhancement of the pecuniary jurisdiction, this suit is transferred to the City Civil Court. The order dated 23.02.2024 is on page no. 132 thereby transferring the said suit.

(B) There is also the suit filed by the Society against the Developer bearing Suit No. 120 of 2024, at page no. 47. It is pending in this Court.

3. There is no dispute that learned single Judge of this Court as per order dated 28.11.2023 has directed to list both the suits together.

However, in view of the notification dated 16.01.2024, suit filed by the Developer is transferred to the City Civil Court. On this background the Developer has filed present application for transfer of the City Civil Suit to this Court. There is also prayer for tagging his suit with the suit filed by the Society.

4. Learned Advocate Mr. Singh is **having preliminary objection** for maintainability of this transfer application. On merits, he is seeking time to file an affidavit-in-reply. He has placed on record copies of two Interim Applications i.e. Interim Application (ST) No. 7035 of 2024 and Interim Application (ST) No. 25998 of 2024 filed by the Developer and they are pending before this Court in a suit filed by the Society. I have gone through the prayers made in both these applications.

5. In nutshell the prayers are as follows:

- (i) The Developer has requested the Court to retain his suit in this Court only. This application was filed in the month of August 2024. Whereas the notification is of dated 16.01.2024.

According to learned Advocate Mr. Singh, when this Court has passed the order on 23.02.2024, in fact it was requested to the Court to keep

their suit pending in this Court only. According to him, even though it is not reflected in the order dated 23.02.2024, they have made the submissions. Learned Advocate Mr. Singh may be right because by filing one interim application they have made it clear that they want retention of the suit in this Court only.

- (ii) Interim application is for modifying the order dated 23.02.2024. (thereby transferring his suit to the City Civil Court). It is filed on 28.02.2024.

For above references, the submission made by learned Advocate Shri Singh on factual aspect is correct. Though the developer has expressed his stand of retention of his suit in this Court and he has prayed for modification, it seems he has not circulated both the applications and it is told by learned Advocate Mr. Kanade that there is no order passed on those applications. This submission is not disputed by learned Advocate Mr. Singh. On the basis of the instructions, learned Advocate Shri Kanade submitted that he will not press both these applications. If those applications are not pressed, only this application will survive. If it is so certainly this Court can entertain this application.

6. So far as merits of this application are concerned, the copy of the

plaint in both the suit are annexed. If prayers made in both the suits are considered, both of them want certain reliefs from Court on the basis of the same development agreement dated 05.05.2004 and supplementary development agreement dated 12.12.2008. **The developer wants declaration in his favour that these agreements still valid, and they are binding.** This suit was filed in the year 2015. **Whereas Society** has filed a suit in the year 2024 praying for declaration that both these agreements are validly terminated and treated as cancelled.

7. According to learned Advocate Mr. Singh there is an application moved by the developer in his suit seeking amendment in his plaint thereby pleading that the termination alleged by the society is not valid. That application is still pending.

8. The prayers made in both the suits are on the basis of the same agreement. It may happen that the City Civil Court may give certain verdict in Developer's suit and it may also happen that this Court may give some verdict in the suit filed by the Society. One does not say these verdicts will be in what manner in whose favour. If both the verdicts are contrary to each other, both the Parties will be facing

difficulty in implementing those orders.

9. So this Court feels that the suit filed by the Developer needs to be transferred to this Court. The Hon'ble Supreme Court has always preferred to avoid conflict of the judgments. This is in order to secure the ends of the justice.

10. So I am in favour of allowing the transfer application.

11. For the above facts, I have not granted time as sought by learned Advocate Mr. Singh to file affidavit-in-reply. It is for the reason the necessary documents are annexed to the application and I have elaborately heard him. I am inclined to impose cost of Rs. 5,000/- on the Developer. It is for the reason every time he has moved several applications.

12. Prayer clause 14(ii) read thus:-

“14(ii) - The Hon'ble Court, may kindly transfer Suit No. 314/2015 pending before the Hon'ble City Civil Court, Mumbai, to the Hon'ble Bombay High Court, on such terms and conditions as deemed fit and proper”.

13. Hence following order is passed:-

ORDER

- (i) Misc. Civil application is allowed in terms of prayer clause 14(ii).
- (ii) The Applicant is directed to pay cost of Rs. 5,000/- to the Society.
- (iii) Misc. Civil Application is disposed of.
- (iv) Both the learned Advocates submitted that there are interim applications filed by them in their respective suits, and they are pending. There can be direction to the City Civil Court to send record expeditiously. Now it is for the Applicant-Developer to follow up with the City Civil Court, but the Society is certainly at liberty to press for their interim application.
- (v) The Registrar, City Civil Court to see that record is sent to this Court on the priority basis.

[S. M. MODAK, J.]