IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.467 OF 2024

M/s Landmark Constructions .. Appellant

Versus

The State of Maharashtra .. Respondent

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Mr. Saurabh Butala a/w Mr. Harshad Bhadbhade and Ms Nikita Mandaniyan, for the Appellant.

Dr. Ashvini A. Takalkar, APP, for the State.

API, Mr. Jahangirali Sayed, EOW, Thane City, is present.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 31st JULY, 2024

P.C:-

1. Mr. Butala, learned counsel for the Appellant submit that the Appellant is aggrieved by the direction of the Additional Sessions Judge, Kalyan issued on 05.03.2024, on the application filed through the Managing Partner of M/s. Land Mark Constructions for setting aside the attachment of the property.

He has invited our attention to the proposal given by the Appellant, the first proposal contained in an affidavit dated 09.08.2021, where a specific statement was made, without prejudice to the rights of the Applicant Firm and without any liability being fastened upon it, that it is ready and willing to complete the construction of the entire project and keep aside flats worth Rs.4,82,81,140/- alongwith interest, as the Court deem fit. However, according to Mr. Butala, on 09.10.2023, the Managing Partner of the Appellant Firm furnished another proposal, where in paragraph 6 a specific statement was made to the following effect:

> *"6. I say that without prejudice to the rights of the Applicant Firm and without any liability the Applicant Firm is ready and willing to deposit the amount of Rs.4,82,81,140/- in the Hon'ble Court or before the E.O.W. as the Hon'ble Court deem fit and proper in case the Hon'ble court is pleased to remove/set aside seizure/ attachment of the property.*

2. When we have perused the impugned order, which has clearly highlighted the relationship between Sanchayani, who is accused of receiving amount from investors/prospective buyers and the default committed, we have seen that the understanding between the Appellant Firm and Sanchayani on 04.05.1995 clearly contemplated that, the Appellant Firm was supposed to receive a total amount of Rs.8,02,77,750/- against construction of nine buildings comprising of 279 flats. Thus, the entire project was agreed to be purchased by Sanchayani. The Appellant Firm received an amount of Rs.4,82,81,940/- out of the total amount of consideration agreed, and specifically highlighting the relationship between the two since a specific proposal came from the Appellant that, if the property is attached, it would cause huge loss to it, and when the proposal came that, without prejudice to its rights and without any liability it is ready and willing to complete the

construction and initially for keeping aside the flats worth Rs.4,82,81,140/- which was received alongwith interest, which was subsequently modified by stating that the Appellant shall deposit the amount, the Additional Sessions Judge, Kalyan, permitted removal of the attachment of the property, but made it subject to the condition as set out by him in clause (a) of the operative portion of the order, which reads to the following effect:

> *(a) Applicant Firm is directed to deposit the balance amount after deducting the cost of 31 flats out of total amount of Rs.4,82,81,940/- along with compound interest at the rate of 7% per annum from the date of receipt of the amount by the applicant Firm till date.*

3. It is evident from the first affidavit of the Appellant that, since he indicated at the relevant time, that the Firm is ready and willing to complete the construction by keeping aside the flats worth amount received by him alongwith interest, the MPID Court accepted the second option of deposit of the balance amount, after deducting the cost of 31 flats, out of the total amount of Rs.4,82,81,940/-, but added a condition of compound interest at the rate of 7% per annum from the date of receipt of the amount by the Appellant Firm till date.

We find that, this condition at this stage may prove to be onerous, and though we deem it appropriate for the prosecution to secure this amount at a subsequent point of time by praying for the interest and it would be open for the Court to consider the same, at the present stage, when the Appellant is ready to deposit the amount of Rs.4,82,81,940/-, we modify the order dated 05.03.2024 to that extent, with the liberty as reserved to the prosecution as far as the interest amount is concerned.

Needless to state that, the attachment shall be raised only upon compliance of this condition, and as Mr. Butala has instructions to make a statement that, the deposit will come within 12 to 16 weeks, the attachment shall be raised dependent upon this compliance of the deposit of the amount. With this modification, the Appeal is disposed off.

Needless to state, we must clarify that the deposit is without prejudice to the rights and contentions of all the parties in matter.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**