

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO.916 OF 2024

IN

SUIT NO.94 OF 2024

Bank of Baroda Employees Mayuresh

Co-operative Housing Society Ltd.

... Applicant (Org. Plaintiff)

In the matter between

Bank of Baroda Employees Mayuresh

Co-operative Housing Society Ltd.

... Plaintiff

V/s.

Kamla Homes & Lifestyles Pvt. Ltd.

... Defendant

Mr. Amogh Singh a/w Nirav Karia, Krutisha Pandey, Monika Shekhawat, Vikas Misrha i/by Bhavin Bhatia for the Applicant/Plaintiff.

Mr. Vishal Kanade, Counsel, Ms. Akanksha Patil, Counsel a/w Mr. M. P. Vora, Advocate and Ms. Akshata Pawar, Advocate i/by M/s. Pramodkumar & Company for the Defendant.

CORAM : ARIF S. DOCTOR, J.

DATE : 13TH AUGUST 2024

P.C. :

1. The Plaintiff is a Cooperative Housing Society (**'Plaintiff Society'**) who has filed the captioned Suit against the Defendant Developer *inter alia*

seeking a declaration that the Development Agreement dated 17th May 2016 executed between the Plaintiff Society and the Defendant Developer is validly terminated, cancelled and the same is null and void.

2. While the captioned Interim Application seeks various reliefs, Mr. Singh, Learned Counsel appearing on behalf of the Plaintiff Society has presently confined his submissions only to prayer clause (e1) of the Interim Application. Prayer clause (e1) reads thus, viz.

“e1 that pending the hearing and final disposal of the suit, this hon’ble Court, be pleased to pass temporary Order and of injunction restraining the Defendant or any of them by themselves, their servants, agents and all persons claiming through them from :-

- i. Relying in any manner whatsoever on the aforesaid documents namely: Development Agreement dated 17/05/2016, the duly registered before Assistant Sub-Registrar, Borivali – 5 vide document no. BRL-5-4916-2016 EXHIBIT-“H” to the Plaint, Power of Attorney Dated 17/05/2016 duly registered before office of Sub-Registrar, Borivali – 5 vide document no. BRL-5-4917-2016 dated 19/05/2016 EXHIBIT – “I” to the Plaint, and notarized Supplementary Agreement dated 19/05/2016 EXHIBIT – “K” to the Plaint, before any authority or person;*
- ii. dealing with, disposing of, alienating, transferring, encumbering or assigning the suit property in any manner whatsoever or any part thereof to any other persons and/or creating any third party rights, title or interest in to or over the suit property/premises to be*

- constructed on the suit property viz. Property described in EXHIBIT – “A & B” to the plaint;*
- iii. Applying for the sanction of any Plans for the development or redevelopment of the said property, viz. Property described in EXHIBIT – “A & B” to the Plaintiff;*
 - iv. Negotiating or entering into any transaction with the Plaintiff members in respect of the suit property, viz. property described in EXHIBIT – “A & B” to the Plaintiff.*
 - v. Carry out any work of demolition, additions, alteration or construction in the suit property viz. Property described in EXHIBIT – “A & B” to the Plaintiff.*
 - vi. In any manner interfering with the redevelopment process to be undertaken by the Plaintiff either by themselves or through any other person on all that piece and parcel of suit property i.e. land bearing C.T.S. no.369/1 admeasuring area of 1868.40 Sq. Mtrs. (As per PR Card) of Plot bearing no.G, G1, at Village Pahadi Goregaon (west)-400104 in Mumbai Suburban District and District Mumbai along with Building on the said land Known as ‘Radhika’& ‘Mallika property described in EXHIBIT – “A & G” to the Plaintiff and the structures constructed thereon or any part thereof.”*

3. Before advertng to the rival contentions, it is useful to set out the following facts which are largely not in dispute, viz.

- i. The Plaintiff is stated to be the owner of a plot of land bearing CTS No.369/1, admeasuring 1868.40 square meters at Village Pahadi, Goregaon (West), Mumbai 400 104 (**'the said plot'**). There are two buildings standing on the said plot in which the members of the Plaintiff Society reside.
- ii. The Plaintiff Society, being desirous of redeveloping the said buildings, had on 17th May 2016 entered into a Development Agreement (**'DA'**) with the Defendant as also certain ancillary agreements/documents required to facilitate such redevelopment. It is not in dispute that the DA *inter alia* provided that **(a)** the members of the Plaintiff Society were to get 38% additional carpet area from the area of their existing flats; **(b)** the Defendant would obtain an IOD within a period of six months from the date of execution of the DA and **(c)** the redevelopment would be completed within a period of 24 months after the members had vacated their flats, with a grace period of six months.
- iii. It is also not in dispute that thereafter the Defendant vide its letter dated 14th February 2020 *inter alia* proposed the following changes to the DA, viz.
 - (a) the association of an NBFC with the project;

- (b) reduction in the area to be given to the members of the Plaintiff Society to 24% instead of 38%;
 - (c) waiver of the requirement of furnishing a bank guarantee.
- iv. The Plaintiff Society initially rejected the aforesaid proposal vide a Resolution dated 27th February 2020 passed in a Special General Body Meeting ('SGM'). This rejection was communicated to the Defendant on 10th February 2021. Subsequently however, the members of the Plaintiff Society on 14th August 2021 resolved as accept the revised proposal however the said resolution was valid only upto 31st March 2022.
- v. Though the Plaintiff and Defendant are at variance as to the reasons, what is indisputable is the fact that the redevelopment has since the year 2016 not been proceeded with and both the buildings stand exactly as they were in 2016. It is also not in dispute that no further agreement was executed between the Parties post the DA.
- vi. The Plaintiff Society, on 2nd January 2023 terminated the DA. The Defendant responded to the said letter on 9th March 2023 and the present Suit was filed on 10th April 2023.

4. Mr. Singh, Learned Counsel appearing on behalf of the Plaintiff submitted that the Plaintiff Society had terminated the DA since the Defendant had taken absolutely no steps towards redevelopment of the said buildings from the year 2016. He pointed out that the terms of the DA made clear that the redevelopment which was contemplated would be carried out by the Defendant in a time bound and expeditious manner. He submitted that the DA was entered into so that members of the Plaintiff Society could be rehoused in new flats but despite no fault on the part of the members of the Plaintiff Society, the Defendant had done absolutely nothing under the DA. It was thus he submitted that the Plaintiff Society was left with no choice but to terminate the DA as had been done vide the letter dated 2nd January 2023, since the Plaintiff Society had *inter alia* lost faith in the Developer.

5. Mr. Singh then submitted that it was clear from the Defendant's own conduct that the Defendant was not desirous of proceeding with the DA and had infact sought to renege from the same. In support of his contention, he placed reliance upon the Defendant's letter dated 14th February 2020 by which the Defendant had informed the Plaintiff Society as follows, viz.

"At the further outset, we hereby state that to strengthen the project we propose the association with Non Banking Finance Companies (NBFC's) or similar associate or etc. for the reinforcement of our project wherein safety and security of the society and its members are completely safeguarded. The

reduction of additional area is limited compared to other plot due to availability of road width TDR. Our several other projects have been affected to the tune of reduction in additional area offered by 15-20%.

In view of the above by considering all the above aspects, we would like revise and conclude our offer as under :-

- a) We will be providing 24% additional free carpet area to the members on their existing carpet area.*
- b) Proposed plan will be revised as per revised offer and in accordance with the provisions of Development Control & Promotion Regulations, 2034.*
- c) After the enforcement of The Real Estate (Regulation & Development) Act, 2016, Maharashtra, MAHA RERA, 2016, the safety, security and interest of the members of the society gets covered entirely with all risk and liability on the part of the Developers alone and the regulations of the said Act is adequate towards the Bankers guarantee for the due performance of the development of the society and will work as a substitute towards the performance Guarantee for the development of the project hence Bank Guarantee need not be given to the society as registration with RERA authority completely provides security and safety to the society."*

He submitted that from the above it was made amply clear by the Defendant that the Defendant did not want to proceed with the DA in the terms which had been agreed to between the Parties.

6. Mr. Singh submitted that the Defendant did not even have the slightest intention of proceeding with the DA and the same was also evident from the fact that though the Plaintiff Society had terminated the DA on 17th July 2022, the Defendant had, not till date, challenged the termination of the DA by filing a Suit. He thus submitted that clearly the termination was accepted by the Defendant and therefore the Plaintiff was today entitled to interim reliefs as prayed for.

7. Mr. Singh submitted that the present Interim Application was necessitated only because the DA named the Defendant as the Developer in respect of the said buildings. He submitted that it was therefore only to obviate any difficulty which could be faced on this count when applying for the necessary permissions etc. to the Municipal and other Authorities for redevelopment of the said buildings that the present Application was filed, since the records of the Municipal and other Authorities would reflect the name of the Defendant as Developer.

8. Mr. Singh submitted that the Plaintiff Society was the owner for the said plot and could not be shackled to a Developer in whom the Plaintiff Society had lost faith in. He reiterated that the members of the Plaintiff Society had been looking forward to their new flats since the year 2016 and had, for no

fault of their own, been deprived of these redeveloped flats. He then placed reliance upon the judgement of this Court in the case of ***Punjab National Bank Workers Cooperative Housing Society Limited vs. Meeti Developers***¹ and drawing a parallel to the facts of the present case pointed out that this Court had in very similar facts held as follows, viz.

“21. This is sadly the stark reality of redevelopment project in this city. Society members are entitled to better their living conditions. The property is theirs. They are the owners of it. It may be that in the course of redevelopment they are required to confer certain rights on a developer. After all, they are not able to afford the costs of reconstruction themselves. Allowing a developer the right to sell free sale units is compensation for the developers putting up the rehabilitation units to re-accommodate members. This does not confer by itself in every case rights in the land in favour of a developer. There are equitable considerations to be kept in mind. A developer is in search of only thing : the profits that it will make from the project. The interest of society members are entirely different. What they are looking at is better homes, ones long promised to them, but ones that remained an unfulfilled dream forever receding in time.

22. The contest is therefore between what is a essentially human displacement problem and the purely profit-oriented objective. If there is to be an equitable balance, then there can be no doubt on which side a Court of equity will lean. The developers may have a claim to be made in damages. It is free to pursue that claim. That cannot give it rights in specie over the property itself nor can it subject the full ownership rights of the society to its demands. Not only is the developer entirely profit-oriented, and that necessarily matters that a developer can be compensated in money terms, immediately putting them out of the reach of any interim relief, but they

1 2021 SCC OnLine Bom 5280

have also cannot said to have acquired any direct interest in the land itself. Indeed, the only situation in which a developer may be able to get some relief is if it can demonstrate that it has played it 'by the book', as it were, and there is no default on its part.

- 23. An attempt, however, on the other hand to choke up a development to leverage changes in development policy and available FSI to maximise profit is a strategy that comes at a real cost to society members, and is a stratagem that no Court of equity can, will or should ever countenance for a minute.*
- 24. The strategy is plain and, like the Emperor's clothes, it bares all. The idea is to keep the society and its members hanging by a thread, stuck in an endless cycle of delayed payments and part payments, all the while ostensibly keeping the contract 'alive', claiming rights in it, and waiting to squeeze every last drop of available buildability out of the project only to maximize profits.*
- 25. If therefore today Meeti Developers is unable to demonstrate compliance, the fact it may have made some payment in between will be of no avail. The only way it can stave of its ejection as a developer is to demonstrate complete and exact compliance with its contractual obligations under the contract. This it is clearly unable to do.*
- 26. The society for its part does not have to do very much more than demonstrate the lack of compliance by the developers. The society is after all the owner of the property and its title is paramount. The society terminated the Agreement on 12th November 2020. I cannot understand why the developers even then sat idly by and did not think to come to Court till as late as 18th January 2021. That delay alone probably tells us all that we need to know about the bona fides of the counter petition by Meeti Developers."*

Mr. Singh submitted that the above ratio would squarely apply to the facts of the present case and thus the Plaintiff Society was today entitled to the relief that was being sought for, i.e. prayer clause (e1).

9. *Per contra*, Mr. Kanade, Learned Counsel appearing on behalf of the Defendant at the outset submitted that the Plaintiff was disentitled to any relief since the Plaintiff had suppressed vital facts and correspondence from this Court. He pointed out that the Plaintiff Society had suppressed (i) the Resolution dated 14th August 2021, by which the Plaintiff Society had *inter alia* agreed to accept the Defendant's revised proposal as also (ii) letters dated 28th August 2021, 23rd September 2021, 27th October 2021, 30th November 2021, and 8th December 2021. He submitted that the said letters made it clear that not only had the Plaintiff Society accepted the Defendant's revised proposal but also that it was infact the Plaintiff Society who had not reverted on the revised plans sent by the Defendant as they were required to do. He submitted that all this was suppressed in the Plaint and therefore it was the Plaintiff Society who had not approached this Court with clean hands. He then placed reliance upon the judgement of the Hon'ble Supreme Court in the case of *S. P. Chengalvaraya Naidu (dead) by L.Rs vs. Jagannath (dead) by L.Rs. and Ors.*² to submit that the

2 AIR 1994 Supreme Court 853

Plaintiff having suppressed the necessary and material facts from this Court was not entitled to any equitable relief from this Court.

10. Mr. Kanade then additionally pointed out that the Plaintiff had been unable to demonstrate even a single breach of the DA committed by the Defendant. He submitted that there was no failure/breach of the DA on the part of the Defendant in performing its obligations, but the failure was in fact on the part of the Plaintiff Society since the Plaintiff Society had not approved any of the plans sent by the Defendant. He thus submitted that there was therefore no occasion for the Defendant to apply for the IOD as per Clause 3(g) of the DA. He then placed reliance upon the judgement of this Court in the case of *M/s. Shanti Builders vs. Ciba Industrial Workers Co-op Housing Society*³ to submit that the Plaintiff Society having failed to approve the revised plans sent by the Defendant could not allege delay on the part of the Defendant.

11. Mr. Kanade also submitted that it was not open to the Plaintiff Society to distance itself from the Resolution dated 14th August 2022 merely because there had been a change in the managing committee of the Plaintiff Society after the said Resolution was passed. He then submitted that the Plaintiff's contention that the Defendant had accepted termination of the DA was a patently untenable one. He first pointed out that the very fact that the

3 2012(7) ALL MR 444

Defendant had filed an Affidavit in Reply to the present Interim Application, made evident that the Defendant was very much contesting the termination. He then submitted that the mere fact that the Defendant had yet not filed a Suit to challenge the termination was wholly immaterial since the limitation period for filing such Suit had yet not expired. Basis this he submitted that there was absolutely no merit in the contention that the Defendant had accepted the termination of the DA as suggested by the Plaintiff Society.

12. Mr. Kanade submitted that the Plaintiff's reliance upon the Defendant's letter dated 14th February 2020 to justify termination was also untenable since the present Suit was filed only on 10th April 2023 which was after three years from the date of the said letter. He thus submitted that the cause of action for filing the present Suit having arisen on 14th February 2020, the limitation period would begin to run from that date. He then placed reliance upon the judgements in the case of *Smt. C. Padmawati Naidu & Ors. vs. Friends Cooperative Housing Society Ltd. & Ors.*⁴ and *Khatri Hotels Private Limited & Anr. vs. Union of India & Anr.*⁵ to submit that once the period of limitation begins to run the same would not stop. Basis this he submitted that the present Suit seeking a deceleration the termination was valid was thus beyond time and barred by limitation.

4 (2016) 4 MHLJ 289

5 (2011) 9 SCC 126

13. Mr. Kanade additionally pointed out that the relief which was being pressed for was in the nature of a final relief and thus could not be granted at the interlocutory stage. In support of his contention he placed reliance upon a judgement of Hon'ble Supreme Court in the case of *Cotton Corporation of India Limited vs. United Industrial Bank Limited & Ors.*⁶. Basis this, he submitted that the Plaintiff Society was not entitled to any of the reliefs that had been prayed for.

14. Mr. Singh in dealing with the submissions made by Mr. Kanade submitted that the contention of suppression was wholly devoid of merit. He submitted that there was no question of any suppression and that once the Defendant had by its letter dated 14th February 2020 expressly indicated its inability to proceed with the DA and seek to revise the same nothing more needed to be said. He pointed out that the resolution dated 14th August 2021 upon which great reliance was placed by the Defendant made explicit that the said Resolution was valid only upto 31st March 2022. He submitted that the period had well passed, and that no supplementary agreement had been entered into between the Plaintiff Society and the Defendant by which the terms of the DA were in any manner amended and/or altered. He thus submitted that the only Agreement between the parties was the DA and nothing else.

6 AIR 1983 Supreme Court 1272

15. He additionally pointed out that the plans etc. submitted by the Defendant proceeded on the basis of 24% additional area which was contrary to the DA. He then pointed out from the email dated 30th November 2021 sent by Plaintiff Society to the Developer that the Plaintiff Society had requested the Defendant to send a complete plan of the building and therefore in absence of the detailed plans, the Plaintiff Society was unable to proceed further. It was thus that he submitted that it did not lie in the mouth of the Defendant to contend that the Defendant had taken steps under the Agreement between the Parties, and it was the Plaintiff Society who had not responded. It was thus he submitted that there was absolutely no merit in the case of the Defendant.

16. After having heard Learned Counsel for the Parties at length, as also having considered the case laws cited and the material on record, I find that the Plaintiff has more than made out a case for the grant of reliefs in terms of prayer clause (e1) for the following reasons, viz.

- A. *It is not in dispute* that (i) the DA was executed in the year 2016 (ii) the DA is the only Agreement between the Parties for redevelopment of the said buildings (iii) the Defendant had vide its letter dated 14th February 2020 expressly sought to ***revise and conclude*** the DA in terms of the proposal sent. Mr. Singh is thus absolutely correct in his submission that

the matter must really rest here since the Defendant has in express terms indicated that the Defendant did not want to proceed on the terms as agreed between the Parties and recorded in the DA.

B. Though much was sought to be made of the fact that the Plaintiff Society had vide its resolution dated 14th August 2021 accepted the Defendants revised proposal, in my view, this fact alone is of no significance or relevance whatsoever. The said resolution itself made explicit that the Defendant's revised proposal was to be reviewed on 31st March 2022 and that the said resolution was only valid upto that date i.e. 31st March 2022. What is crucial to note and what is not disputed is the fact that admittedly no agreement/supplementary agreement/addendum to the DA was executed and/or entered into between the Parties before or for that matter even after 31st March 2022. Thus, the only Agreement between the Parties at all times is the DA, which Agreement the Defendant has clearly reneged from. It is also for this reason that I find the contention of suppression to be entirely devoid of merit.

C. I also find force in the contention of Mr. Singh that the conduct of the Defendant in not having filed a Suit to challenge the termination exposes the Defendants complete lack of bonafides. It is useful in this regard to

make a reference to the observations of the Learned Single Judge in the case of *Meeti Developers* (supra) wherein even though the Developer (in that case) had filed a Petition (under Section 9 of the Arbitration Act) challenging the said termination, since the said Petition was filed after a little over two months from the date of the termination this Court observed “*The society terminated the Agreement on 12th November 2020. I cannot understand why the developers even then sat idly by and did not think to come to Court till as late as 18th January 2021. That delay alone probably tells us all that we need to know about the bona fides of the counter petition by Meeti Developers*”. In the present case the termination is 2nd January 2023 and the same remains unchallenged for over one and a half years. I do not agree with the contention of Mr. Kanade that the filing of an Affidavit in Reply would amount to the Defendant contesting the termination, such a contention has only to be stated to be rejected. If the Defendant was indeed aggrieved by such termination, the Defendant would have undoubtedly approached this Court to challenge the same. The reason as to why the Defendant has infact not done so, are not far to seek and are to be found in the Defendants letter dated 14th February 2020, which would stare it in the face had such suit/proceeding been filed.

- D. Additionally, I find that the Plaintiff has made out a more than *prima facie* case to demonstrate that the Defendant has failed to discharge its obligations under the DA. Even after the resolution dated 14th August 2021, the plans sent by the Defendant were incomplete as is evident from an email dated 30th November 2021 addressed by the Plaintiff Society to the Defendant. In any view, even if I were to accept that the Defendant had indeed taken some steps, in my view they would amount to naught given that the revised proposal was alive only till 31st March 2022 and no supplementary agreement/amendment/addendum to the DA was entered into. In my view, the conduct of the Defendant is merely to be a thorn in the flesh of the Plaintiff Society and nothing more.
- E. The contention of the Suit being barred by limitation also needs to only be stated to be rejected. The Suit is filed on 8th April 2023 and *inter alia* seeks a declaration that DA was validly terminated and the same was null and void. Thus, by no account can it be said that the Suit is *prima facie* barred by limitation since the same is filed beyond three years from the Defendant's letter dated 14th January 2020. Even if one had to accept such a contention, that the cause of action to file the Suit was based on or arose on 14th February 2020, it is the Defendant's own case that this proposal of the Defendant was accepted on 14th August 2021 and was

kept alive till 31st March 2022. Thus, in these fact for the Defendant to even raise such a contention in my view is not only misconceived but is mala fide.

- F. Similarly, the contention that the relief sought for is in the nature of a final relief and therefore cannot be granted at this stage is also equally untenable. It is now well settled that in an appropriate case, the Court can certainly do so. In this context it is useful to make reference to the judgement of the Hon'ble Supreme Court in the case of ***Hammad Ahemad Vs. Abdul Majeed***⁷ in which the Hon'ble Supreme Court held as follows,

"58. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. In Deoraj v. State of Maharashtra [(2004) 4 SCC 697], this Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad interim injunction in mandatory form can be granted. The Court held as under : (SCC p. 703, para 12)

"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing

⁷ (2019) 14 SCC 1

there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."

In my unhesitating view, not granting the Plaintiff the interim relief as prayed for would indeed prick the conscience of this Court and result in injustice being perpetuated upon the Plaintiff. It is thus I find that an overwhelming case for the grant of a mandatory relief has been made out.

17. For the aforesaid reasons, the Interim Application is allowed in terms of prayer clause (e1) and is accordingly disposed of in the above terms.

(ARIF S. DOCTOR, J.)

AFTER PRONOUNCEMENT

18. At this stage, Learned Counsel appearing on behalf of the Defendant requests that the order be stayed for a period of two weeks. However for the reasons as recorded above, I am not inclined to grant such stay. Hence, the application for stay is rejected.

(ARIF S. DOCTOR, J.)