Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 744 OF 2024
WITH
INTERIM APPLICATION NO. 14129 OF 2024
IN
APPEAL FROM ORDER NO. 744 OF 2024

M/s. Krishna Constructions and Ors .....Appellants

Vs.

Mr. Subhash Uttam Dalvi and Ors .....Respondents

Mr. S. S. Patwardhan a/w Mr. Atharva Kamble i/b M/s. Mrinal Shelar for the appellants
Dr. Abhinav Chandrachud (On VC) a/w Mr. Pavan Patil, Mr. Janay Jain, Mr. Shubham Saraf and Mr. Kartavya for respondent no. 1

CORAM : GAURI GODSE, J.

DATE : 21st JANUARY 2025

IRESH MASHAL

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Date: 2025.01.23 20:09:04 +0530

ORDER:

APPEAL FROM ORDER NO. 744 OF 2024:

1. The appeal raises arguable points. Hence, admit.

2. Learned advocate appearing for respondent no. 1 waives notice .

3. In addition to Court notice, learned advocate for the appellants shall serve the remaining respondents by private notice and file affidavit of service before the next date.

INTERIM APPLICATION NO. 14129 OF 2024:

4. Rule on interim relief in terms of prayer clause (a) is made returnable on 1st April 2025.

5. Learned advocate appearing for respondent no. 1 waives notice .

6. In addition to Court notice, learned advocate for the applicants shall serve the remaining respondents by private notice and file affidavit of service before the next date.

7. Heard learned counsel for respondent no. 1-original plaintiff. He opposes the grant of ad-interim relief. Learned counsel for the plaintiff relies upon Section 7 of The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. ('MOFA Act') to contend that the amended plans pursuant to which the developer started the construction is illegal as there is breach of Section 7 of the MOFA Act. He relies upon the legal propositions settled by this Court in the case of ***Madhuvihar Co-operative Housing Society Vs. Jayantilal Investments, Mumbai and Ors***[1] and in particular the propositions laid down in paragraphs 46 and 47. He therefore, submits that the sanctioned amended plans in

1 **2011(1) Mh.L.J. 641**

breach of the provisions of MOFA would be illegal. He, therefore, submits that the plaintiff has made out a prima facie case for the grant of interim relief as granted by the trial Court by way of the impugned order.

8. The plaintiff has arraigned all the flat purchasers as defendants nos. 8 to 105 who have purchased the units or tenaments as per the construction carried out pursuant to the amended plans.

9. It is not disputed by the plaintiff that the said defendants would be affected in view of the prayers in the suit; hence, they are made party defendants. By way of impugned order, the developer is restrained from carrying out any activity in the project with respect to the additional construction, creating any further third party interest or handing over possession to the purchasers of the respective flats of the upper floors i.e. 8 to 16 floors.

10. A query was put to the learned counsel for the plaintiff that in the event suit is dismissed, whether the plaintiff would be agreeable to protect the rights of defendant nos. 8 to 105 and compensate them for the loss that will be suffered by them and the developer. In response, learned counsel for the plaintiff submits that since the further

construction is an illegal construction, the plaintiff would not be liable to compensate the developer or defendant nos. 8 to 105.

11. Prima facie, I am convinced that the impugned order is passed without recording any findings on the balance of convenience and the irreparable loss that would be suffered by defendant nos. 8 to 105. Prima facie, I am of the opinion that the clauses in the agreement executed in favour of the plaintiff and more particularly clause 11(c), (e) and (g) would not amount to any blanket consent. The said clauses prima facie would not mean that it was not an informed consent of the plaintiff.

12. It is not disputed that the flat agreed to be sold to the plaintiff is not altered in view of the amended plans. Hence, no prejudice would be caused to the plaintiff, if ad-interim relief is granted in this application. There is no dispute that the rights created in favour of defendant nos. 8 to 105 would be affected in view of the impugned order. A perusal of the reasons recorded in the impugned order does not satisfy the well-established principles of prima facie case, balance of convenience and irreparable loss for grant of injunction. Hence, in my opinion, the appellant has made out a prima facie case for grant of

ad-interim relief as per Interim Application No. 14129 of 2024.

13. Hence, till next date, there will be ad-interim relief in terms of prayer clause (A).

14. It is clarified that this order should not be construed as a stay to the proceedings of the Suit. The proceedings of the Suit should go on, irrespective of pendency of this appeal.

[GAURI GODSE, J.]