

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

INTERIM APPLICATION NO. 2670 OF 2020
IN
CONTEMPT PETITION NO. 132 OF 2019
IN
COMMERCIAL ARBITRATION PETITION N O.1072 OF 2019

Bhavna Rajesh Doshi & ors. ... Applicants /Intervenors

In the matter of

SBI Staff Dream Co-operative
Housing Society Ltd. ... Petitioner

Vs

Surya - Landmark Developers
Private Limited ... Respondent

Ms.Sukeshi Bhandari a/w Mr.Akshay Chavhan for the Applicants.

Mr.Bhavin Bhatia for the Original Petitioner.

Mr.Harpreet Singh i/b. Inderpal B. Singh for the Respondent.

CORAM : B.P. COLABAWALLA, J.

THURSDAY, 25TH FEBRUARY, 2021

P.C. :

1. The present Interim Application is filed seeking to recall or set aside the order dated 6th March 2020 passed in the above Contempt Petition No.132 of 2019 in Commercial Arbitration Petition No.1072 of 2019. The entire basis of this Application is that the Applicants had purchased, for valuable consideration, certain flats in the free-sale component of a building belonging “SBI Staff Dream Cooperative Housing Society Ltd.” (for short, “**the Society**”), and which was to be developed by the 1st Respondent / developer.

2. The learned counsel appearing for the Applicants submitted that the aforesaid order ought to be set aside as their rights are vitally affected and no notice was given to the Applicants before passing the aforesaid order. The learned counsel submitted that the order passed on 6th March 2020, and more particularly paragraphs 15 and 16 thereof, seriously affect the rights of the Applicants, and hence these paragraphs ought to be modified. In a nutshell, it was the argument of counsel that allowing the Society to terminate the Development Agreement entered into with Respondent No.1, the Applicants rights are vitally affected as they have paid valuable consideration for purchase of flats in the free sale component of the building that was to be re-developed by

Respondent No.1. If the Development Agreement is terminated then the Applicants would not get the flats purchased by them from Respondent No.1 and for which they have paid substantial amounts. Hence the learned counsel seeks recall/modification of the order dated 6th March 2020 in so far as it records that the Development Agreement entered into between the Society and Respondent No.1 stands terminated.

3. Having heard the learned counsel for quite some time on this aspect, I am unable to agree with this submission. Paragraphs 15 and 16 of the order dated 6th March 2020 read thus:

“15. Now while this was in the context of payment of Rs.20 lakhs and failure to comply would constitute contempt or aggravated contempt, I see no reason why the Development Agreement should not be terminated as a necessary consequence as an alternative to a jail sentence and fine being imposed immediately.

16. Mr Samantaray on instructions from Mr Murari Shah, who is present in Court, therefore, accepts the termination by the Society of the Development Agreement. Consequently, paragraph 8 of the 26th February 2020 order by which the society was not to act in furtherance of this termination will no longer continue.”

4. This order was passed in a Contempt Petition which has been filed by the Society against the 1st Respondent / developer. In

this detailed order, this Court has held that it saw no reason why the Development Agreement should not be terminated as a necessary consequence and as an alternative to a jail sentence and fine being imposed. It was on this basis that the Advocate for the 1st Respondent / developer, on instructions from the 1st Respondent, accepted the termination by the Society of the Development Agreement. In such a situation, the grievance, if any, of the Applicants cannot be against the Society. The Applicants have no right vis-a-vis the Society and they certainly have no privity with the Society. This being the case, they certainly have no locus to contend that the Society is not entitled to terminate the Development Agreement entered into with the 1st Respondent/developer. Their grievance, if at all, would be against the 1st Respondent / developer from whom they have purchased their flats in the free-sale component.

5. In fact, Applicant Nos.2 and 3 herein have already filed a Suit in this Court being Suit (L) No.310 of 2020 in which specific performance is sought. The Society is also a party to the said Suit along with the 1st Respondent / developer. When that Suit was moved for ad-interim relief, this Court passed an order dated 20th

July 2020, which reads thus:

- “1. Heard by video conferencing.
2. No ad-interim relief is possible. There is an agreement between the Plaintiff and the 2nd Defendant, the developer. The 1st Defendant society had entered into a development agreement with the 2nd Defendant. The 1st Defendant terminated that agreement. The Plaintiff was to purchase flats in the redeveloped building. This gives the Plaintiff no rights vis-a-vis the society and certainly there is no privity between the Plaintiff and the Society. The Plaintiff is at liberty to pursue its remedy against the 2nd Defendant but no injunction in respect of any part of the property that belongs to the society or is to be developed for the Society’s benefit can be granted in a suit for specific performance of the agreement between the Plaintiff and the 2nd Defendant.
3. The Notice of Motion is returnable in the normal course. To be listed after the normal Court functioning resumes.
4. This order will be digitally signed by a Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.”

(emphasis supplied)

6. As recorded in this order, and correctly so, the Applicants herein, purchasing flats in the building to be re-developed by the 1st Respondent/developer, do not get any rights against the Society, as there is no privity between the Applicants and the Society. In this order, it is categorically recorded that the

Applicants are at liberty to raise all their contentions against the 1st Respondent / developer but no injunction on any part of the property that belongs to the Society or is to be developed for the Society's benefit can be granted in a Suit for specific performance of the agreement between the Applicants and the 1st Respondent / developer. As mentioned earlier, this order is passed in a Suit filed by the Applicant Nos.2 and 3 herein. The said order has not been challenged.

7. In these circumstances, and having looked at the overall facts of the matter, I do not find that the Applicants have made out any case whatsoever to recall/set aside/modify the order dated 6th March 2020 and more particularly paragraphs 15 and 16 thereof. At the cost of repetition, it would be important to again mention that the Applicants cannot have any rights against the Society. This, of course, does not mean that they cannot make any claim and seek necessary reliefs against the 1st Respondent / developer.

8. In view of the foregoing discussion, I find that the Interim Application is without any merit and is accordingly dismissed. However, there shall be no order as costs.

9. This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order.

B.P. COLABAWALLA, J.