

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1691 of 2024**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 1691 of 2024

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M/S KAMDAR CONSTRUCTION

Versus

LH OF ROSHAN ALI SADRUDDIN THOBHANI & ORS.

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Appearance:

JENIL M SHAH(7840) for the Appellant(s) No. 1

MR HENIL M SHAH(10677) for the Appellant(s) No. 1

for the Defendant(s) No. 1,1.1,1.2,1.3,1.4,1.5

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 25/04/2024

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

Order in First Appeal:

1. Mr Mehul Shah, learned senior counsel appearing with Mr Henil M. Shah, learned advocate for the appellant submitted that the suit was filed for setting aside of the gift deed and specific performance of the development agreement. It is submitted that various issues have been considered including the issue of suit being barred by the Commercial Courts Act, 2015 and the agreement containing the arbitration clause. It is submitted that if at all the trial court, was of the opinion that it has no jurisdiction, it could have return the plaint under Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') and not rejected it under Order VII Rule 11 of the Code. It is submitted that

so far as the aspect of arbitration agreement is concerned, there also lies a fallacy in the findings contained in the order. The learned Judge, has considered paragraph 11 of the agreement which, according to the trial court, was to be decided by the arbitration. On this ground, the learned court, has held that it does not disclose the cause of action. Such findings, would also be against the judgment of this Court in the case of *Marwadi Shares and Finance Pvt. Ltd. Company vs. Kishorkumar Nagjibhai Mavani* reported in 2009 (2) GLR 938.

2. Considered the submissions. Issue notice to the defendants, returnable on 21.06.2024.

Order in civil application:

Heard Mr Mehul Shah, learned senior counsel appearing with Mr Henil M. Shah, learned advocate for the applicant.

Issue notice to the respondent, returnable on 21.06.2024.

(SANGEETA K. VISHEN,J)

(NISHA M. THAKORE,J)

RAVI P. PATEL