

lgc

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

SUIT NO.1948 OF 1983

Societade De Fomento Indus Pvt. Ltd. : Plaintiffs
versus
Tulsidas V Patel Pvt. Ltd. and ors. : Defendants.

Mr. Erach Kotwal with Mr.Bhagatjee and Mr. N Shah and Mr. G Pujara i/by Little and Co. for the Plaintiff.

Mr.Gaurav Joshi i/by Doijode & Associates for the Defendant Nos. 1 and 2.

**CORAM:- R M SAVANT, J
DATED :- APRIL 01, 2011.**

PC.

1 Heard the learned counsel for the parties. Perused the Plaint and Written Statement. The additional Issues which arise on account of the amendment to the Plaint are settled as under :-

ADDITIONAL ISSUES :-

- 1] Whether it is proved that the said Agreement which forms the subject matter of the present proceedings stood frustrated/impossible of performance and was thus unenforceable on account of the directives issued by the Government of Maharashtra under the Maharashtra Regional and Town Planning Act, 1966 as alleged in para 4 of the Additional Written Statement?

- 2] Whether it is proved that the said agreement which forms the subject matter of the present proceedings stood frustrated/impossible of performance and was thus unenforceable on account of the letter dated 26th July 1976 issued by the Mumbai Municipal Corporation which prohibited construction of more than 6 floors or 20 meters in height, as alleged in para 4 of the Additional Written Statement.
- 3] Whether it is proved that the alleged suit flat does not exist and the question of grant of specific performance does not arise, as alleged in para 7 of the Additional Written Statement.
- 4] Whether the Plaintiff is not entitled to any order or decree for compensation against the Defendants, jointly or severally, as alleged or for the reasons alleged or at all as alleged in para 16 of the Additional Written Statement.
- 5] Whether in addition to specific performance of the suit as per the prayer clause (a) compensation of the sum of Rs.23 crores or such amount as may be determined by the Court be awarded to the Plaintiff.

2 The Plaintiff to write to the Defendants as regards to the admission of the documents and the said process to be completed within four weeks from date. List the Suit for further Directions on 2/5/2011. Though it is the case of the Plaintiffs that the Defendant Nos.2 and 3 have been served with the writ of summons and they have filed the affidavit of service to the said effect and as and by way of abandoned caution the Plaintiffs to serve the notice on the said Defendants by courier and file further affidavit of service within six weeks from date.

(R M SAVANT, J)