

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

SUIT NO.1027 OF 2008

Lokhandwala Infrastructure Pvt Ltd .. Plaintiff

versus

Mukund Vadilal Shah & Ors .. Defendants

Ms.Naseem Patrawala i/by P.M.Mehta and Co for the plaintiff.
Mr.Ralston Fernandes for defendant Nos.4, 6,7(a) to 7(d), 8, 9.

CORAM : S.C.DHARMADHIKARI, J.

29th November 2011.

P.C.:

. Heard learned counsel appearing for the parties. The following issues arise for determination in this suit:

- (1) Whether the plaintiffs prove that they are entitled to a declaration that the Agreement dated 12th August 2004, Annexure C to the plaint is valid, subsisting and binding upon the defendants and each one of them as prayed?
- (2) Whether the plaintiffs prove that the plaintiffs are entitled to conveyance in relation to the suit property from the defendants as

prayed in prayer clause (b) of the plaint?

- (3) Whether the defendants prove that the plaintiffs are not entitled to seek any relief on the basis of the said Agreement /MOU as it is not a party to the Agreement for Sale/ MOU dated 12th August 2004? In other words, whether the plaintiffs can claim to be successors in interest of M/s.Lokhadwala Builders as claimed by them in para 1 of the plaint?
- (4) Whether the defendants prove that the suit is bad for non joinder of the necessary party, namely, M/s.Lokhandwala Builders?
- (5) Whether the plaintiffs prove that they are and were always ready and willing to comply with the terms and obligations of the Agreement/MOU dated 12th August 2004?
- (6) Whether the plaintiffs prove that they were put in possession of the immovable property in part performance of the Agreement/MOU dated 12th August 2004?
- (7) Whether the defendant Nos.4, 6, 7a to 7d, 8 and 9 prove that there is no privity of contract between them and the plaintiffs?
- (8) Whether the defendant Nos.4, 6, 7a to 7d, 8 and 9 prove that the Agreement, Annexure C to the plaint is not duly stamped

as per the provisions of the Bombay Stamp Act, 1958?

- (9) Whether the defendant Nos.4, 6, 7a to 7d, 8 and 9 proves that the Agreement dated 12th August 2004 was terminated and the said termination is binding on the plaintiffs as alleged in para 7 of the written statement?
- (10) Whether the defendants prove that the MOU was only a proposal and not Agreement for Sale as alleged by them in para 10 of the written statement?
- (11) Whether the plaintiffs are entitled for compensation in lieu of specific performance, namely, in the alternative, as prayed?
- (12) What order and reliefs?

2} Affidavit of documents and evidence to be filed within four weeks.
Discovery and Inspection be completed within this period.

(S.C.DHARMADHIKARI, J)