

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 9231 OF 2020

IN

COMMERCIAL SUIT (L) NO. 9229 OF 2020

Zuber Ahmed Siddiqui and Ors.

... Applicants/Plaintiffs

vs.

Nehrunagar Shivalaya

... Respondents/Defendants

Co-operative Society Ltd and Ors.

Mr. Prateek Seksaria a/w. Mr. Saket Mone, Ms. Deepti Mohan, Mr. Vishesh Kalra, Mr. Subit Chakrabarti, Mr. Shrey Shah, Mr. Abhishek Salian, Mr. Shantam Mandhyan and Ms. Radhika Kulkarni i/b. Vidhi Partners for the Plaintiffs.

Mr. Sanjiv Sawant i/b, Mr. Abhishek Deshmukh for Defendant no. 1.

Mr. Mayur Khandeparkar a/w. Mr. Siddharth Wakode for Defendant no. 2.

Mr. Mehul Thakkar a/w. Mr. Vishnu Chavan for Defendant no. 3.

Ms. Jaya Bagwe i/b. Ms. Sharmila Deshmukh for Defendant no. 4 – MHADA.

CORAM : A. K. MENON, J.

DATED : 18th MARCH, 2021

P.C. :

1. The dispute in the suit pertains to the plaintiffs rights to accommodation in building being constructed by defendant no. 1 society. The dispute essentially arises out of the termination of appointment of earlier developer who had entered into agreements with the plaintiffs and the society is now appointing an alternate developer. The structure put up by the erstwhile developer has been demolished as a result the core dispute is as to the plaintiffs liability to pay escalation costs and the amounts demanded by the society in that respect.

2. The society proposes to provide permanent alternate accommodation to its members and the plaintiffs who were purchasers in the proposed “free sale” component. The society is presently facing litigation from the applicant who seek determination of their rights since they had already paid amounts to the earlier developer-Defendant no. 3, the agreement with whom was terminated by the society.

3. The Society has now proceeded to appoint defendant no. 2. In order to make progress in the matter of certain contentious issues pertaining to costs, the plaintiff and defendant no. 1 are now agreed that

the issue pertaining to the computation of escalation costs including cost of demolition of the old structure and costs of putting up old structure has been reduced to Terms of Reference which are signed by Advocates for the plaintiff and defendant no. 1 and tendered before the Court today.

4. In view of the above the following order is passed at the request of the learned counsel for plaintiff and defendant no. 1. :

(i) M/s. Shetgiri and Associates Architects are appointed to determine the costs in accordance with the Terms of Reference signed as aforesaid and taken on record and marked X for identification.

(ii) Parties shall inform the said Architect to carry out exercise in accordance with the terms agreed between the parties and for that reason M/s. Shetgiri and Associates shall be at liberty to call upon the plaintiffs' and defendants' Advocates to provide all necessary documents and records that the said Architect may require.

(iii) The Advocates shall ensure that the Architects are provided with all particulars that they seek and extend full cooperation to the Architect.

(iv) The Architect shall endeavour to file a report on or before 17th April, 2021.

(v) List on 20th April, 2021 for directions.

(vi) Registry to provide a photocopy of the Terms of Reference along with copy of this order to the Architect.

(A. K. MENON, J.)