

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

SUIT NO.2453 OF 2007

Sunil Mantri & Anr.Plaintiffs

V/s.

Bhupen Chheda & Ors.Defendants

Mr. Ganesh Ambekar i/b. M/s. Thakore Jariwala and Associates for the plaintiffs.

Mr. H.K. Gada i/b. Harakchand and Co. for the defendant no.1.

Mr. Prantik Majumdar a/w. Mr. Rahul Thekedar i/b. M/s. M.P. Savla and Co. for the defendant nos.2,4 to 7, 9 to 27 and 30 to 33.

CORAM : K.R.SHRIRAM,J

DATE : 17th OCTOBER,2016

P.C.:-

1 The following issues arise in the matter :-

I S S U E S

“1) In view of arbitration clause being clause 30 of Memorandum of Understanding (a) whether this Hon'ble Court has jurisdiction to entertain and try the suit? (b) whether the suit is maintainable in law?

2) Whether the defendants prove that the suit is bad for misjoinder of party being defendant no.34?

3) Whether the plaintiffs prove that suit is maintainable against defendant no.34 in absence of notice u/s 527 of MMC Act?

4) Whether the plaintiffs prove that the Memorandum of Understanding dated 24th September, 2004 being Exhibit 'C' to the plaint was validly executed by the defendant no.1 on behalf of defendant nos.2 to 33?

5) Whether the plaintiffs prove that there is valid and concluded agreement arrived at between the plaintiffs and defendants in respect of suit property?

- 6) Whether the plaintiffs prove that the Memorandum of Understanding dated 24th September, 2004 is valid, binding and enforceable against the defendants?
- 7) Whether the plaintiffs prove that the plaintiffs are entitled to specific performance of Memorandum of Understanding dated 24th September, 2004?
- 8) Whether the plaintiffs prove that there was an oral agreement subsequent to the Memorandum of Understanding dated 24th September, 2004 between the plaintiffs and the defendant nos.1 to 33?
- 9) Whether the plaintiffs prove that the alleged agreement between the plaintiffs and defendant nos.2, 4 to 7, 9 to 27 and 30 to 33 is valid or subsisting or binding on defendant nos.2, 4 to 7, 9 to 27 and 30 to 33?
- 10) Whether the plaintiffs prove that they were ready and willing to perform their obligations under the Memorandum of Understanding dated 24th September, 2004 and the alleged oral agreement between the plaintiffs and the defendant nos.2, 4 to 7, 9 to 27 and 30 to 33?
- 11) Whether the plaintiffs prove that the plaintiffs are entitled to specific performance of the oral agreement between the plaintiffs and the defendant nos.1 to 33?
- 12) If the answer to issue no.7 and issue no.11 is in the negative, whether the plaintiffs, in the alternative, are entitled to a decree against defendant nos.1 to 33 in the sum of Rs.100 crores together with interest thereon at 18% p.a. from the date of the suit until payment/realisation?
- 13) Whether the plaintiffs prove that the plaintiffs are entitled to a declaration that the amount of Rs.100 crores claimed by the plaintiffs is secured by a valid and subsisting charge in favour of the plaintiffs over the suit property and any structure/construction thereon?
- 14) What decree? What order?

2 On or before 19th November, 2016 parties to file and serve their respective affidavit of documents and also give inspection of documents relied upon by them to each other. On or before 26th November, 2016 parties to file and exchange their statement of admission and denial with reasons for denial.

3 On or before 10th December, 2016 the plaintiffs also to file their list of witnesses and affidavit in lieu of examination in chief of the first witness together with compilation of documents and serve a copy thereof upon the defendants.

4 Stand over to 16th December, 2016 for marking of documents on which date the plaintiffs' first witness shall remain present in court.

5 It is made clear that if the parties do not comply with the directions given above, they will be put to terms and also will not be permitted to rely on any document copy whereof is not annexed to the plaint or the written statement and/or mentioned in the list of documents annexed to the plaint or the written statement.

(K.R.SHRIRAM,J)