

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 19961 OF 2022

IN

SUIT (L) NO. 19174 OF 2022

Roshanlal Kanhaiyalal Kothari & Ors. .. Applicants

In the matter between:

Roshanlal Kanhaiyalal Kothari & Ors. .. Plaintiffs

Vs.

Mishal Construction Pvt Ltd & Ors. .. Respondents

Aseem Naphade a/w A.P. Stanson, Shivam Latniya, Utkarsh Sanadi, Shivam Latusiya & Prachi Rungta i/b APS Law Associates for Applicant/Plaintiff.

Laxminarayan Shukla i/b Legal Vision for Defendant No.1.

Bhupesh Dhumatkar i/b Mandar Soman for Society.

Bijal Shah, General Manager of Defendant No.1.

CORAM:- B. P. COLABAWALLA,J.

DATE :- DECEMBER 13, 2022.

P. C.:

1. The above Interim Application is pressed for urgent ad-interim reliefs in terms of prayer clauses (a) and (e) which read thus:

- (a) *That the Hon'ble Court be pleased to pass an order of temporary injunction restraining Defendant Nos. 1 and 2 from selling, transferring, alienating, encumbering and/or creating any third party right, title or interest or parting with possession of units with the area and dimensions as agreed under the Consent Terms dated 25.01.2010 read with the Permanent Alternate Accommodation Agreement dated 04.02.2010 situated in the building known as "Maitri Vijay Cooperative Housing Society Ltd" situated at CTS Nos.109, 109-1 to 20, Vadhvi village, South Salsette Taluka, Dr C.G. Road, Chembur, Mumbai 400074; i.e. 2 commercial premises with the following specifications viz. (a) area admeasuring 2336 square feet usable carpet area, (b) width of 35 feet, (c) height of 14 feet and (d) loft of 33% area;*
- (e) *That the Hon'ble Court be pleased to pass an order directing Defendant No.1 to pay to the Plaintiff's the arrears of transit rent of Rs. 81,77,295/- with interest at the rate of 18% per annum calculated from the dates as set out in the Chart at Exhibit "A-50",totally amounting to Rs. 1,10,75,249.01/- with further interest at the rate of 18% per annum from the date of filing of the suit till realization;*

2. As far as prayer clause (a) is concerned, the learned counsel appearing on behalf of Defendant No.1, has stated on instructions, that the 1st Defendant shall not dispose of Shop No.4-A, Shop No.5 and Shop No.5-A, which according to the 1st Defendant, is the entitlement of the Plaintiff. The grievance of the Plaintiff is that even these shops do not comply with the Consent Terms entered into with the Plaintiff in as much as these shops do not have a width of 35 ft. and height of 14 ft. He

therefore pressed for an injunction in relation to Shop No.1 and 6 respectively. As far as Shop No.1 and Shop No.6 are concerned, the learned counsel appearing on behalf of the 1st Defendant, has stated that these shops have already been disposed of and are not available to be allotted to the Plaintiff. This is a controversy that the Court will decide at the time of hearing and final disposal of the Interim Application.

3. In the meanwhile, as per the statement of the learned counsel appearing on behalf of the 1st Defendant, the 1st Defendant is restrained from creating any third party right, title, interest and/or parting with possession of Shop No.4-A, Shop No.5 and Shop No.5-A respectively.

4. As far as prayer clause (e) is concerned, the learned advocate appearing on behalf of Defendant No.1 has submitted that the outstanding is not Rs.81,77,295 (as claimed by the Plaintiff) but a sum of approximately Rs.45 Lakhs. He submitted that without prejudice to the rights and contentions of the 1st Defendant, they shall pay an amount of Rs.45 Lakhs to the Plaintiff within a period of 12 weeks from today. The said statement is accepted as an undertaking given to this Court. It has also been explained to the Director of the 1st Defendant who is

present in Court that breach of this undertaking shall have serious and dire consequences including a jail term. A separate written undertaking shall be executed by the Directors of the 1st Defendant, undertaking to pay the sum of Rs.45 Lakhs to the Plaintiff within a period of 12 weeks from today. This written undertaking shall be filed in this Court within a period of 2 weeks from today.

5. Additionally, the learned advocate has stated that until the aforesaid payment of Rs.45 Lakhs is made to the Plaintiff [as per the undertaking given above], the 1st Defendant shall not create any third party rights in relation to Flat No.701 which is yet to be constructed in Wing-B of the Project. The said statement is accepted as an undertaking given to this Court. It is made clear that by merely giving this security it does not mean that the 1st Defendant is released of its undertaking to pay the amount of Rs.45 Lakhs within a period of 12 weeks from today.

6. The Defendants shall file their affidavit-in-reply to the above Interim Application within a period of 4 weeks from today and serve a copy of the same on the advocates for the Plaintiff. The 1st Defendant, shall also disclose the transactions entered into in relation to Shop No.1 and Shop No.6 respectively.

7. Place the above Interim Application for hearing and final disposal as per its turn.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)