

ITEM NO.34

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C).....CC 2505/2017

(Arising out of impugned final judgment and order dated 09/02/2011 in FA No. 1759/2007 09/02/2011 in CA No.364/2011 passed by the High Court of Bombay)

YOGESH WALHE AND ORS

Petitioner(s)

VERSUS

M/S PATIL AND SONS AND ORS

Respondent(s)

(With appln. (s) for permission to file SLP and office report)

Date : 06/02/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
Ms. Arti Singh, AOR
Ms. Pooja Singh, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Permission to file the special leave petition is granted.

Heard Ms. Meenakshi Arora, learned senior counsel along with Ms. Arti Singh, learned counsel appearing for the petitioners.

Delay condoned.

The present special leave petition calls in question the legal propriety of the order dated 9th February, 2011, which reads to the following effect:-

"Intervention application to be heard at the time of final hearing of the appeal."

We would have been loath to pass any order in such a special leave petition, but it is submitted by Ms. Arora, learned senior counsel that she is aware of the legal position that such kind of orders are not to be challenged under Article 136 of the Constitution of India. According to her, the intervenors are compelled to approach this Court as they are purchasers and their money is blocked with the developer. If the High Court decides the matter, either they will be able to get their flats or the money. She has drawn out attention to the order dated 4th December, 2009, in S.L.P. (C) No.4331 of 2008. The said order reads as follows:-

"In these petitions, the petitioners have questioned the correctness of the orders passed by the Division Bench of the Bombay High Court which declined the petitioners prayer for being permitted to complete construction of the disputed building and create third party rights but directed the respondents not to carry on any construction work and/or create third party rights in relation to property in question.

We have heard learned counsel for the parties and perused the record. We do not find any valid ground to interfere with the order of the High Court, but, at the same time, we feel that it will be in the interest of both the parties that the main appeals pending before the High Court are decided at the earliest.

Accordingly, the SLP's are disposed of with a request to the High Court of Bombay to dispose of First Appeal No.1759 of 2007 and connected matters within six months from the date of receipt/production of copy of this order."

After referring to the said order, it is also propounded by the learned senior counsel that the intervenors had approached the District Consumer Forum for mitigation of their grievances, but the consumer forum is not taking up the matter as the same is *sub judice* before the High Court. If we understand the agony projected by Ms. Arora, learned senior counsel appearing for the petitioners, the intervenors are in the state of "*Trishanku*" and their interest is in jeopardy for no fault of theirs.

In view of the aforesaid, though we do not find any fault with the order of the High Court, we reiterate our request that was made on 4th December, 2009, to the High Court to dispose of the matter within four months hence. We are sure that the High Court shall pay heed to our request. Liberty is granted to the petitioners to mention before the High Court and bring this order to the notice of the learned Judges, who are hearing the First Appeal pending before them.

The special leave petition stands disposed of accordingly.

(Chetan Kumar)
Court Master

(Shakti Parkash Sharma)
Court Master