

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11455 OF 2013

Deepak Shamji Negandhi .. Petitioner
VS.
Ashish Dinesh Parekh & Anr. .. Respondents

Mr. Khan Javed Akhtar for Petitioner.
Ms Pooja Khandeparkar with Mr. M. Vora i/b. M/s. Navneet Vora & Associates for Respondents.

CORAM : M. S. SONAK, J.
DATE: 24 MARCH 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 26 June 2013, by which the City Civil Court has dismissed the petitioner's notice of motion no. 3623 of 2012 seeking enhancement of compensation in lieu of transit accommodation and certain other reliefs, as well.

3] By the MOU entered into in October 2010, the respondents had agreed to complete the construction and development activities within a period of thirty months and during this period, the respondents had agreed and undertaken to pay compensation in an amount of Rs.20,000/-. The period of thirty months expired in April 2013. Admittedly, even as of today, the construction has not commenced.

4] In the margins as against clauses 13 and 14 of the MOU, there is handwriting which indicates that an enhancement of 10% in the matter of compensation in lieu of transit accommodation was to be provided for. However, there are no initials and there is a serious dispute as to whether or not such term for enhancement was at all agreed upon by and between the parties. In fact, the impugned order rejects the petitioner's notice of motion holding that there is no clause in the MOU which provides for enhancement.

5] Even if we are to proceed on the basis that there was no specific clause providing for enhancement, it is to be noted that in terms of the MOU, the construction of the building to provide for permanent residence to the petitioner was to be completed within a period of thirty months. This was in fact the outer limit. In this view of the matter, it would not be proper to deny the petitioner 10% enhancement which in the facts and circumstances of the present case is quite reasonable.

6] As noted earlier, the period of thirty months expired in April 2013. Accordingly, for the period between April 2013 and April 2015, the respondents are directed to pay compensation at the rate of Rs.22,000/- per month. Since the respondents have already paid compensation at the rate of Rs.20,000/- per month, they shall only pay the difference within a period of four weeks from today.

7] Further, for the period from April 2015 till April 2016, the respondents are directed to pay compensation at the rate of Rs.24,200/- per month. It is reasonably expected that the construction of the building would be completed by the said period. In case the construction is not completed then the petitioner will be at liberty to apply for further enhancement. Such application shall be considered by the City Civil Court on its own merits and in accordance with law.

8] This is a case where the MOU was entered into between the parties in the year 2010. The MOU contemplated the completion of construction and allotment of permanent residence to the petitioner within twenty four months or within the outer limit of thirty months. The construction is yet to commence. The petitioner is not responsible for this position. In these circumstances, irrespective of whether or not the MOU had made any clause for enhancement of compensation, it is only appropriate that some enhancement as aforesaid is granted. If the position is considered year-wise, then the enhancement granted is about five per cent, which, in the circumstances is more than reasonable.

9] The learned counsels for the parties state that it appears that the amounts payable by the respondents are being deposited by them in the City Civil Court and thereafter the same are withdrawn by the petitioner. The same arrangement can continue and the directions in this judgment and order are to be construed accordingly.

10] The impugned order dated 26 June 2013 is accordingly substituted with directions as aforesaid.

11] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka