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

ARBITRATION PETITION NO.434 OF 2015

M/s.Dharma Construction ...Petitioner
V/s.
Om Ganesh Krupa Co-op. Hsg. Soc. Ltd. & Ors. ...Respondents

Mr.Bhavin R. Bhatia for the Petitioner.
Mr.Kalpesh Joshi for Respondent No.1.
Ms.Pranita Hingamre for Respondent N.2.
Mr.Shashikant Chaudhari i/b Maharashtra Law Associates for
Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 3RD JULY, 2015.

P.C. :-

1. By this petition filed under section 9 of the Arbitration & Conciliation Act, 1996 (for short "the Arbitration Act"), the petitioner seeks the appointment of the Court Receiver in respect of the two flats bearing No.A/13-B and A/15 of respondent nos.2 and 3 with all powers under Order XL Rule 1 of the Code of Civil Procedure, including power to take physical possession of the said flats and to hand over the same to the petitioner to enable the petitioner to commence the work of demolition. Some of the relevant facts for the purpose of deciding this petition are as under :

2. Respondent no.1 society is the owner of a building consisting of two wings of ground plus four upper floors having 34 numbers of flats which were occupied by the members of respondent

no.1 society. The building was in dilapidated condition which required heavy and extensive repairs. The society invited tenders to undertake the redevelopment work of the said property. The petitioner submitted its bid in response to the said invitation. On 5th September, 2010, respondent no.1 passed a resolution declaring the petitioner as successful bidder. On 7th February, 2012, the petitioner entered into memorandum of understanding with respondent no.1 society. On 31st March, 2013, respondent no.1 society approved and confirmed the appointment of the developer in view of the fresh offer and approved the drafts of the development agreement and other documents. On 30th July, 2013, respondent no.1 entered into the development agreement with the petitioner. The said agreement is duly stamped and registered.

3. On 17th July, 2014, the petitioner and respondent no.1 entered into a deed of modification. It is the case of the petitioner that on 19th June, 2014, the petitioner availed of the IOD from the Municipal Corporation and got the plans approved. On 3rd June, 2014, the society requested all the members to submit their NOC.

4. On 23rd June, 2014, the petitioner called upon the society to hand over vacant possession of the flats within 30 days from the date of receipt of the said letter and offered various compensation. Respondent no.1 vide its letter dated 25th June, 2014 informed the members and directed to vacate the flats in terms of the development agreement. On 5th July, 2014, the petitioner once again called upon respondent no.1 to get vacant possession of the property from all their members. It is the case of the petitioner that on 15th July, 2014, the petitioner forwarded the cheques for shifting charges and displacement compensation for all 34 members. Most of the members

have accepted the shifting charges and displacement compensation without raising any protest.

5. On 5th August, 2014, the society circulated a letter to all the members informing them about the progress of redevelopment and other modalities for finalization of the permanent accommodation and to collect the compensation cheques.

6. It is the case of the petitioner that on 10th October, 2014, all the members of respondent no.1 society except respondent nos.2 and 3 vacated their respective flats by accepting cheques. Respondent no.1 called upon respondent nos.2 and 3 also to co-operate for redevelopment without causing any delay and to vacate their respective flats.

7. On 13th November, 2014, respondent no.2 addressed a letter to the society and refused to hand over possession of his flat.

8. Since respondent nos.2 and 3 failed to vacate their respective flats, the petitioner filed this proceeding under section 9 of the Arbitration Act for interim measures.

9. Learned counsel for the petitioner invited my attention to the various agreements entered into between the petitioner and respondent no.1 and also copies of the resolutions passed by respondent no.1. He submits that out of 34 members, 32 members have vacated their respective flats on or before 15th August, 2014. Respondent nos.2 and 3 however, on one or other ground have refused to co-operate for redevelopment of the property and have refused to vacate their flats in breach of the resolutions passed by

respondent no.1 society. He submits that the petitioner has already spent substantial amount and obtained the IOD for the purpose of redevelopment. He submits that in view of the non-co-operative attitude of respondent nos.2 and 3, the entire redevelopment of the property is stalled.

10. Learned counsel for respondent no.1 society submits that because of non-co-operative attitude of respondent nos.2 and 3, the society as well as 32 members of the society are suffering. They have already vacated their respective flats in the month of August, 2014. They are ready and willing to provide all co-operation to the petitioner for the purpose of redevelopment. He submits that merely because of two members not co-operating and have refused to vacate their respective flats, the society and other members cannot be made to suffer. He submits that the society has no objection if the reliefs as prayed for by the petitioner are granted by this Court in the interest of members of the society.

11. Learned counsel for respondent nos.2 and 3 submits that the petitioner has not entered into any registered agreement with respondent nos.2 and 3 or with other 32 members. It is submitted that till such agreements are entered into with all the members of the society, the petitioner cannot be allowed to carry out redevelopment of the property. Learned counsel submits that the petitioner has not complied with several other terms and conditions of the development agreement and their clients cannot be forced to vacate their respective flats till such compliance is made by the petitioner.

12. In re-joinder, learned counsel for the petitioner states that insofar as the submission of learned counsel for respondent nos.2

and 3 that the individual agreement with respondent nos.2 and 3 which shall be duly registered is concerned, the petitioner has no objection to enter into such individual agreement for permanent alternate accommodation with respondent nos.2 and 3 and would get the same registered if they vacate the premises within the time prescribed by this Court.

13. Insofar as the submission of learned counsel for respondent nos.2 and 3 that they would not vacate the premises till the petitioner also registers the agreement for permanent alternate accommodation with other 32 members also is concerned, learned counsel for respondent no.1 submits that those 32 members are willing to wait to get their agreements registered till the petitioner obtains commencement certificate from the Municipal Corporation.

14. In my view since respondent nos.2 and 3 have not challenged the resolution passed by respondent no.1 society agreeing to vacate their property for re-development and approving the development agreement in favour of the petitioner, the said resolution and the development agreement are binding on respondent nos.2 and 3 also. In my view, two members of the society, who are in miniscule minority, cannot stall the project of the society. The petitioner has already spent substantial amount. Other 32 members have already vacated their flats almost one year back.

15. In my view, the petitioner has thus made out a case for appointment of the Court Receiver. Admittedly, respondent nos.2 and 3 have neither challenged the said resolution by filing any appropriate proceedings in appropriate Court of law nor the said resolution has been stayed by any Court.

16. I therefore, pass the following order :-

a). The arbitration petition is made absolute in terms of prayer clauses (a) and (b). The Court Receiver shall take forcible possession from respondent nos.2 and 3 and the other occupants found in possession and if necessary with the assistance of the police and hand over possession of the respective flats to the petitioner for the purpose of redevelopment.

b). Till the Court Receiver takes possession and takes physical possession from respondent nos.2 and 3 and other occupants found in the premises, they shall not create any third party rights in favour of any other parties.

17. The arbitration petition is disposed of in the aforesaid terms. No order as to costs. Parties as well as the Court Receiver to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)