

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

REVIEW PETITION (L) NO.53 OF 2014

In

APPEAL NO.296 OF 2014

In

NOTICE OF MOTION NO.1484 OF 2013

In

SUIT NO.711 OF 2013

Belvedere Court Condominium & Anr. : Review Petitioners
(Orig.Appellants)

V/s.

Modern India Ltd. (formerly known as
Modern Mills Ltd.) & Ors. : Respondents

...

With

CONTEMPT PETITION (L) NO.91 OF 2014

In

NOTICE OF MOTION NO.735 OF 2014

In

APPEAL NO.296 OF 2014

In

NOTICE OF MOTION NO.1484 OF 2013

In

SUIT NO.711 OF 2013

Modern India Limited (formerly known as
The Modern Mills Limited) : Petitioner

V/s.

Belvedere Court Condominium & Ors. : Respondents

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Mr.Arif Bookwala, Senior Advocate, with Mr.Z.A.Zariwala i/b.
M/s.Thakorewala Jariwala & Associates for the petitioners &
respondents in Contempt Petition (L) No.91 of 2014.

Mr.D.D.Madon, Senior Advocate, with Mr.Akshay Patil, Mr.Vishesh
Malviya and Mr.Vineet Unnikrishnan i/b. Federal & Rashmikant for
respondent no.1 & petitioner in Contempt Petn. (L) No.91 of 2014.

CORAM : MOHIT S. SHAH, C.J.&
M.S.SONAK,J.

Date of Reserving)
the Judgment.) : 31.10.2014.

Date of Pronouncing)
the Judgment.):06.02.2015.

JUDGMENT (Per Mohit S. Shah,C.J.)

The present Review Petition is filed for modification of the order dated 27 June 2014 passed by this Court in Notice of Motion no.735 of 2014 in Appeal no.296 of 2014, insofar as the said order records a statement by the learned counsel appearing on behalf of the appellants.

2. The proceedings arise from a suit filed by respondent no.1 company *inter alia* challenging a resolution dated 23 March 2013 for insertion of bye-law no.7 requiring prior consent/approval of the Board of Managers of appellant no.1 Belvedere Court Condominium for transfer of any apartment in the building known as “Belvedere Court Condominium”. In Notice of Motion no.1484 of 2013, the learned trial Judge granted interim relief in favour of the plaintiff (respondent no.1 herein) in the following terms:

“37. Hence Notice of Motion is granted in terms of prayer (a)(i),(ii),(iii) and (iv).”

Prayer clause (a)(i),(ii),(iii) and (iv) of the Notice of Motion reads thus:

“(a) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to restrain Defendants or their servants, agents or employees from in any manner:

- (i) acting in furtherance and/or implementing the impugned Resolutions dated 23rd September 2012 (Exhibit `F' hereto) and 23rd March 2013,
- (ii) seeking to levy any charges or fees or contribution towards development fund or otherwise for transfer of any apartment or admission to membership of the Defendant no.1.,
- (iii) seeking to levy non-occupancy charges;
- (iv) requiring the prior approval of Defendant Nos.1 to 7 for transfer of any flats or apartments whether by way of sale, lease or assignment or leave and license basis or otherwise;”

3. This Court admitted the appeal and while considering the question of granting or declining interim stay against the operation of the above order on the Notice of Motion in the suit, the Court indicated to the learned counsel for the appellants-defendants (review petitioners) that the question of legality or otherwise of the resolution requiring prior consent/approval of the Board of Managers of Belvedere Court Condominium can be examined at the final hearing of the appeal, but for the purpose of interim relief, the plaintiff may indicate the name of the intending purchaser and whether the appellant-defendant no.1 Belvedere Court Condominium would have any objection to transfer the apartment in favour of such intending purchaser. At the hearing on 27 June 2014, the following statements came to be recorded by this Court:

“..... since the defendants have considered the particulars of the said intending purchaser and the defendants do not have any objection to the plaintiff transferring flat no.38-A to Mr.Haji Amin Abdul Razak Kudia, the question of considering the prayer for ad-interim stay would not arise at this stage insofar as Bye-law no.7A is concerned.”

4. Thereafter, on 11 September 2014, the Advocate for the plaintiff moved a praecipe for clarification that Mr.Haji Amin Kudia wants to purchase the above numbered flat in the joint names of himself and his son Mr.Yasin Haji Amin Kudia. The appellants opposed the praecipe by filing an affidavit-in-reply dated 15 September 2014. The tenor of the affidavit was that since the above quoted statement on behalf of the appellants was made without any formal consideration of the proposal of Mr.Haji Amin Abdul Razak Kudia, there was misunderstanding between the appellants and their Advocates and, therefore, the appellants are in the process of making an application for modification of the order dated 27 June 2014. This Court specifically noted that apart from saying that there was no “formal consideration”, the appellants have not indicated any objection to the transfer of the flat in question in favour of Mr.Haji Amin Kudia or his son Mr.Yasin Kudia. This Court accordingly disposed of the praecipe by order dated 15 September 2014 by directing that the appellants shall take all necessary steps for giving no objection for the transfer of flat no.38-A in favours of Mr.Haji Amin Kudia and his son Mr.Yasin Kudia and also to transfer the membership of the condominium in respect of the said flat in faovur of the said persons within two weeks from 15 September 2014.

5. Now in the present Review Petition, it is contended that the statement made by the learned counsel for the appellants and as recorded in the order dated 27 June 2014 was erroneous. In paras 9 and 10 of the Review Petition, it is averred as under:

“9. In the light of all that is stated above, it is clear that till such time as proper application is made by the outgoing member intending to sell his apartment seeking approval of the intending purchaser, the question of Appellants considering the particulars of the intending purchaser and granting any no objection in respect thereof would not arise. Thus the instructions given to the Counsel to make the said statement, as set out hereinabove, is under the clear miscommunication and misunderstanding of the instructions given and the said statement is an error apparent on the face of the record and, therefore, it is submitted that the Order dated 27th June, 2014 (Exhibit “A” hereto) is required to be reviewed and the said statement be deleted and the Order be modified suitably.”

10. The above erroneous statement came to the notice of the Appellants on 30th August, 2014, when the Respondent No.1 by its Advocates' letter dated 30th August, 2014 addressed to the Advocates for the original Appellants sought consent of the original Appellants for adding the name of Mr.Yashmin Haji Amin Kudia.”

6. We have heard learned counsel for the parties. We would like to make it clear that at the time of hearing on 27 June 2014, since the plaintiff (respondent no.1) had succeeded before the learned trial Judge in the Notice of Motion in the suit, we were not inclined to grant any blanket stay against the said order during the pendency of the appeal. At the same time, we were ready to consider if the appellants had any valid or reasonable objection to respondent no.1 transferring the apartment in favour of any

particular individual. Neither at the hearing on 27 June 2014 nor at the hearing of the praecipe on 15 September 2014 or 22 September 2014 or even at the hearing of this Review Petition the appellants raised any specific objection to transfer of an apartment by respondent no.1 in favour of Mr.Haji Amin Abdul Razak Kudia and his son. Hence, we are not inclined to modify the order dated 27 June 2014 for the purpose of deleting the statement made on behalf of the appellants.

7. At the same time, we would like to note that there appears to have been some misunderstanding or miscommunication between the appellants and their Advocates regarding the statement which was to be made on behalf of the appellants. We would, therefore, like to clarify that on 27 June 2014, we had indicated that in the absence of any specific and valid objection, we were inclined to direct the appellants to issue no objection to transfer of the apartment by respondent no.1 to intending purchaser/s on case to case basis. Hence, the learned counsel for the review petitioners appears to have made the statement.

8. In view of the above, the Review Petition is dismissed.

9. The plaintiff (respondent in the appeal) has filed Contempt Petition (L) no.91 of 2014 for punishing the appellants and other defendants for committing breach of the interim orders dated 7 May 2014 & 9 May 2014 passed by the learned trial Judge and orders dated 27 June 2014 and 15 September 2014 and 22 September 2014 passed by the Division Bench. It appears that the

respondents did not implement the orders in view of the above pending controversy which was the subject-matter of the Review Petition. Now that we have dismissed the Review Petition, we direct the respondents (original defendants) to comply with the aforesaid orders dated 27 June 2014 and 15/22 September 2014 within four weeks from today. The Contempt Petition is accordingly disposed of.

(CHIEF JUSTICE)

(M.S. SONAK, J.)