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

COURT RECEIVER REPORT NO. 381 OF 2014
IN
SUIT NO.1512 OF 2009

Shapoorji Pallonji & Co. Ltd. ...Plaintiff
vs
Jignesh Shah & Ors. ...Defendants

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Mr Milind Sathe Sr. Counsel a/w Mr Chirag Balsara a/w Mr S.A.K.Najam-es-sani i/b Maneksha & Sethna for the Plaintiff.
Mr R.D.Soni i/b J.S.Chandnani for Defendant Nos.1 to 5
Mr Sandeep Patil for Defendant No.6 BMC.
Mr Shyam Mehta Sr. Counsel with Mr Aditya Bapat for Court Receiver.
Mr Gaurav Joshi Sr. Advocate with Satya Vora and Mr Ashish Suryavanshi i/b Markand Gandhi & Co. for flat No.1403 as described on page 116 of the affidavit of Defendant Nos.1 to 5 as also at Sr.No.4 on page XII on CR Report.
Mr K.K.Trivedi, 1st Asstt. to Court Receiver.
Ms A. Kapadia for purchaser of Flat No.1601.

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CORAM : S.C. GUPTE, J.

JANUARY 22, 2015

P.C. :

The Court Receiver, High Court, Bombay has been appointed a receiver in a suit filed by the Plaintiff, seeking a decree of specific performance against Defendant Nos.1 to 5 in respect of certain agreements executed between them in relation to redevelopment of the suit property. Defendant No.6 is the Municipal Corporation of Greater Bombay, who are concerned with redevelopment of the suit property as indicated in the order below. Defendant No.7 was joined as a subsequent developer, who claimed rights in pursuance of an agreement purportedly executed between Defendant Nos.1 to 5 and him after the termination of the suit agreement. Defendant No.7 is not concerned with the present Receiver's report.

2 The subject matter of the suit is a plot of land at Mahabar Hill in Mumbai which is owned by Defendant No.6 Corporation, comprising of 14 buildings which house 278 residential tenements, 9 shops and other non-residential premises (“suit property”). The occupants of the suit property have formed a society by the name of Janata Nagar Co-operative Housing Society Ltd. A proposal of redevelopment of the suit property, submitted on behalf of the occupiers, was approved by Defendant No.6. A Memorandum of Understanding was thereupon executed between the society, the occupants and Defendant No.5, authorizing the latter to carry out the work of redevelopment. (Defendant No.5 is a partnership firm, of which Defendant Nos.1 to 4 are partners.) This MOU was followed by a tripartite agreement between the society, Defendant No.5 and Defendant No.6. This tripartite agreement *inter alia* required Defendant No.5 to construct a certain area for Defendant No.6 or in the alternative, pay a fixed capitalized value to Defendant No.6 towards its share. In pursuance of the aforesaid arrangements, Defendant No.5 entered into a Memorandum of Understanding with the Plaintiff, under which Defendant No.5 entrusted the construction work to be carried out in the suit property, including both the rehabilitation component and saleable component of the redevelopment project, to the Plaintiff. As a consideration, the Plaintiff was entitled to sell 55 per cent area of the sale building. This MOU was followed by Supplemental Agreements between the parties. The Plaintiff thereafter completed a part of the construction including the rehab building with 4 wings of ground plus 13 upper floors. Disputes arose thereafter between the parties. As a result, the present suit was filed by the Plaintiff for specific performance of the agreements.

3 By an order dated 27 June 2013, this Court appointed Court Receiver as a receiver of the suit property with the Plaintiff as the agent of the Court Receiver, to complete the construction of the saleable part of the suit property and sell the balance flats at the prevailing market rates with permission from this Court. The Court Receiver was also directed to make payment to Defendant No.6 Corporation towards the capitalized value of the share of the Corporation in the sale building. This amount was directed to be paid as far as possible within a period of six months from the date of the order. This order was

carried in appeal by the respective parties. In appeal, consent terms were arrived at between the Plaintiff and Defendant Nos.1 to 5. These consent terms were taken on record by the Appellate Court and an order in terms of the consent terms was passed. In terms of this order, there was a decree on admission in the suit against Defendant Nos.1 to 5 in the sum of Rs.107 crores. Further, Defendant Nos.1 to 5 were required to pay to Defendant No.6 corporation, the entire capitalized value on or before 4 December 2013. Under this order, the Court Receiver was continued as a receiver in execution with the directions to take all necessary steps in terms of the consent terms and order dated 4 September 2013. Under this order, the Plaintiff was appointed as the agent of the Court Receiver with power to carry out and complete the balance construction work of the sale building within a period of three years from the date of its appointment. The Court Receiver was permitted to sell such number of flats as would recover the decretal amount plus the construction cost spent by the Plaintiff for completion of the construction as may be determined by an Architect on the panel of the Court Receiver. The order envisages that initially the Court Receiver would endeavor to sell the then unsold area estimated to be approximately 52,000 sq.ft. In the event the sale proceeds from the sale of this area were not sufficient to recover the decretal amount, the capitalized value due to Defendant No.6 corporation and the construction cost incurred by the Plaintiff, the Defendant Nos.1 to 5 were required to cancel the sale of flats to the extent of approximately 12,200 sq.ft. area purportedly effected by them and make available such area to the Plaintiff to recover the outstanding amount. On the outstanding amount being fully recovered, the Plaintiff was to have no right, title and interest on the suit building or the project as such and Defendant Nos. 1 to 5 were in such event free to implement the balance project. This order has been accepted by all the parties and the matter rests there. The Plaintiff continued to carry out further construction in terms of the Order.

4 The Receiver has now indicated in his report that after ascertaining the status of the flats purportedly sold by Defendant Nos.1 to 5 to third party purchasers and the available unsold flats, as of date about 31 flats aggregating a total saleable area of 77,901 sq.ft. are available for sale in accordance with the

order and consent terms. After making due inquiries including display of public notices, the Receiver has been able to ascertain about 9 agreements for sale executed by Defendant Nos. 1 to 5 in favour of third party purchasers. After excluding these 9 flats from the total number of flats constructed in the sale building, the Receiver has identified the aforesaid 31 flats, which are available for sale in accordance with the order and consent terms. The Court Receiver has indicated that the dues of Defendant No.6 corporation of approximately about Rs.32 crores as on the date of the Court Receiver's report will have to be paid from out of the sale proceeds of these flats. It is submitted by the Court Receiver that apart from the dues of the Municipal Corporation, the decretal amount of Rs.107 crores and the costs of construction incurred by the Plaintiff as may be certified by an Architect on the Receiver's panel will have to be paid to the Plaintiff. The Receiver has also brought to the notice of the Court that there are pending bills for professional services rendered by the architects and valuers appointed by the Court Receiver as also the earlier architect appointed by Defendant Nos.1 to 5 for the construction of the building. The Receiver has indicated the amounts covered by the bills submitted by these architects and valuers. The Court Receiver has also sought directions against Defendant No.6 corporation to co-operate with the Court Receiver in the matter of regularization of flats forming part of the free-sale component, in accordance with the application made by the Architect appointed by the Court Receiver, to enable the Court Receiver to sell the flats in accordance with the order and consent terms. The Court Receiver has also sought directions from this Court to go ahead with the sale of 31 unsold flats to the highest offerers so as to apply the sale proceeds to pay for the dues of the Municipal Corporation, the decretal amount and the costs of construction. The Court Receiver has submitted a draft agreement for sale to be entered into with flat purchasers for approval of this Court. Appropriate directions have also been sought for payment of fees of the architects and valuers noted above. So also, directions have been sought in respect of car parking spaces purportedly sold by Defendant Nos.1 to 5. Lastly, orders have been sought for appointment of a Chartered Accountant for maintenance of accounts of the sale proceeds recovered and payments made by the Court Receiver in accordance with the directions sought in the present report.

5 The application is opposed by the learned Counsel for Defendant Nos.1 to 5. Learned Counsel makes the following submissions:

i) It is submitted that in accordance with the order and consent terms, unsold flats in the suit building can be sold by the Court Receiver only after completing the entire construction and obtaining an occupation certificate. It is submitted that the question of recovery of the decretal amount together with the construction costs will arise only after completion of the construction. It is submitted that after the entire construction is completed and occupation certificate is obtained, the Architect on the panel of the Court Receiver will have to certify the costs of construction and only then can the amounts be disbursed to the Plaintiff;

ii) It is submitted that as far as the capitalized value payable to Defendant No.6 (MCGM) is concerned, there is no direction in the consent terms to sell the flats to recover and pay the capitalized value due to Defendant No.6;

iii) It is submitted that the capitalized value will have to be brought in by the Plaintiff in the first instance as part of its cost of construction and then refunded to the Plaintiff only after completion of the project as part of the recovery of the construction costs;

6 The minutes of order, in terms of which the Court passed its order on 4 September 2013, do not indicate that the decretal amount, the capitalized value payable to the Municipal Corporation and the construction costs are to be recovered only after the entire construction of the sale building is completed. On the other hand, the minutes envisage that the capitalized value is required to be paid to the Municipal Corporation, within a period of 90 days of the Minutes of Order. The Minutes of Order also envisage payment of 25 % of the decretal amount to the Plaintiff within 90 days and in default of such payment, continuation

of the Court Receiver as a receiver in execution with a view to complete the project and recover the decretal dues together with the capitalized value payable to the Municipal Corporation and the construction cost to be spent by the Plaintiff for carrying out the construction. It is obvious that the payment of the capitalized value to the Municipal Corporation is an important ingredient of the construction project, which must be satisfied before the Municipal Corporation can be called upon to issue an occupation certificate for the project. So also, there is no need to hold the payment of the decretal amount till the entire construction is completed by the Plaintiff. In fact, the Minutes of Order envisage that upon balance payment being made to the Plaintiff, the Plaintiff shall have no right in the sale building or the project as such and the project could thereafter be implemented by Defendant Nos. 1 to 5, in the manner they deem fit. All this suggests that flats in the sale building are required to be sold so as to recover the outstanding dues mentioned in the Minutes of Order, without reference to the completion of the sale building.

7 At the same time, it is clear that the flats available for sale to the third party purchasers can be sold by the Receiver only with a view to recover the outstandings, namely, the capitalized value payable to the Municipal Corporation, the decretal amount and the construction costs payable to the Plaintiff. As of now, as per the report of the Court Receiver, an outlay of about Rs.140 crores is required to meet the outstandings. It is, therefore, not necessary for the Court Receiver to sell as of now all the unsold flats as indicated in the Court Receiver's report. Considering that there is some controversy between the parties, namely, the Plaintiff on the one hand and Defendant Nos. 1 to 5 on the other, as also some third party purchasers with whom the Defendants claim to have entered into agreements for sale, concerning the flats which are already sold and those which are available for sale, it may be reasonable at this stage to allow the Court Receiver to sell only those flats which are admittedly unsold as of this date, according to all the contesting parties. It, however, does not mean that the Court, at this stage, has accepted the case of either of the parties as regards the agreements purportedly entered into by Defendant Nos.1 to 5 for sale of flats. The sale of these undisputed flats, as noted below, is only a pro tem measure,

pending recovery of the entire outstanding dues, in accordance with the consent terms and order. If it is necessary to sell further flats to satisfy the outstandings, there may be a case for considering the question as to whether the flats claimed to have been sold by Defendant Nos.1 to 5 to third parties are in fact validly sold. Today is not the occasion to do so. Learned Counsel for the Court Receiver has indicated that out of the balance flats available for sale listed out in paragraph 23 of the report, the flats at Sr.Nos. 1, 2, 4 to 10, 12, 15, 17, 18, 20, 25, 27, 28 and 30 containing an aggregate saleable area of 43,154 sq.ft., as per the plan and report prepared by the Architect appointed by the Court Receiver, may be sold by the Court Receiver in accordance with the directions contained in the Minutes of Order. Learned Counsel for Defendant Nos.1 to 5 does not dispute that these flats are in fact available for sale, though he disputes the saleable areas mentioned in the Court Receiver's report. The saleable areas of these flats have, in any event, been arrived at after a site inspection by the Architect appointed by the Court Receiver and can be taken to be correct areas available at site. Accordingly, there should be no difficulty in disposing of these flats on account of saleable areas as indicated by the Court Receiver in his report.

8 The next question is about the draft agreement for sale proposed by the Court Receiver in his report. Learned Counsel for Defendant Nos. 1 to 5 has raised certain objections to the draft agreement for sale. It is firstly submitted that the name of Defendant No.5 – Crescent Developers ought to be shown as a party to the agreement for sale. The Court Receiver and the Plaintiff have no objection to Defendant No.5 being made a party to the agreement for sale. Learned Counsel for Defendant Nos.1 to 5 also has certain reservations about the various stipulations in the draft agreement for sale, which purport to empower the Plaintiff, as a decree holder, to deal with third party purchasers and enter into covenants with them. It is clarified that the agreements for sale are being entered into by the decree holder only at the instance of the Court Receiver appointed in execution and that the sale is being conducted by the Court Receiver in accordance with the directions contained in the consent terms and order. With this clarification being in place, there is no need to make any changes in the draft on this score. Accordingly, it is directed that the name of Defendant No.5 be shown in the

agreement for sale as a confirming party and the Court Receiver may make appropriate changes in the draft agreement in that behalf *inter alia* by including the necessary recitals etc. Subject to that, the draft submitted by the Receiver is approved by this Court.

9 As far as the professional bill submitted by M/s H.Mehta & Associates is concerned, it is an admitted position that out of the amount of Rs.5,22,996/-, payable to M/s H. Mehta & Associates, a sum of Rs.3 lacs has been already paid, leaving a balance of Rs.2,22,996/- payable to them. Accordingly, suitable directions will have to be passed for clearing the remaining fees of M/s H. Mehta & Associates in the sum of Rs.2,22,996/-.

10 As far as the professional bill of M/s Mhatre & Associates is concerned, the same pertains to the service purportedly rendered by the Architects to Defendant Nos.1 to 5 prior to the appointment of the Court Receiver. There is a dispute between Defendant Nos.1 to 5 and M/s Mhatre & Associates, in respect of these dues. No directions are, in the premises, required at this stage in this behalf.

11 As far as the car parking spaces are concerned, it is the case of Defendant Nos.1 to 5 that they have sold and allotted 72 car parking spaces and 116 car parking spaces are available at site. Without going into the merits of the claims made by the rival parties in respect of the car parking spaces already sold or allotted, it is clear that for the purpose of this report and the directions sought therein, at least about 116 car parking spaces are available at site. Since, at this stage, this Court is permitting sale of only 18 flats out of 31 unsold flats in the sale building, as indicated above, the car parking spaces available at site for sale (there being 2 car parking spaces per flat allotted), there is no need to decide the issue of the correct number of available car parking spaces at this stage. The Court Receiver may, while disposing of 18 flats as indicated above, dispose of 2 car parking spaces per flat to third party purchasers.

12 Mr Gaurav Joshi, learned Senior Counsel for third party purchaser,

Kalpana P Shah, submits that his client has a registered agreement with defendant Nos.1 to 5. In this agreement, the flat is designated as Flat No.1403. However, from the list of sold and unsold flats submitted by Defendant Nos.1 to 5, compared with the list of flats submitted by the Court Receiver in paragraph 23 of his report, it appears that Flat No.1403 is a refuse area and what is actually constructed in its place is a duplex flat on 15 and 16 floors of the sale building, designated as Flat Nos.1503 and 1603. It is agreed by the learned Counsel appearing for Defendant Nos.1 to 5 that Flat No.1403 mentioned in the registered agreement of Kalpana P. Shah has been re-designated as flat Nos.1503 and 1603. None of the parties has any objection to this re-designation. It is agreed by the learned Counsel for Defendant Nos.1 to 5 that if required by the purchasers, a rectification deed shall be duly executed by the Defendants in respect of these flats. The Court Receiver may join such rectification deed as a confirming party.

13 As far as Flat No.1601 indicated in paragraph 22 of the Court Receiver's report is concerned, there is a registered agreement executed by Defendant Nos.1 to 5 in favour of Mayur Kanchanlal Kapadia and Leena Mayur Kapdia. It is agreed between Defendant Nos.1 to 5 and the purchasers, Mayur Kapdia and Leena Kapadia, who are represented today through their authorized representative in person that this flat has been substituted by flat No.1602 by an unregistered deed of rectification. It is agreed between parties that a fresh rectification deed shall be executed in respect of this substitution and the Court Receiver shall join such rectification deed as a confirming party. Needless to add that after this rectification is carried out, flat No.1601 in the said building will be available for sale by the Court Receiver and will abide by the same order which is passed in relation to 18 flats mentioned above, which are proposed to be sold by the Receiver.

14 As far as the appointment of Chartered Accountants is concerned, the parties have no objection to the appointment of any Chartered Accountant from the panel of the Receiver. Considering the fact that a large amount by way of sale proceeds will be recovered by the Court Receiver and disbursed to the parties, it will be proper to appoint such Chartered Accountant.

15 Accordingly, the following order is passed;

(i) The Municipal Corporation is directed to consider the application made by M/s Parelkar & Dallas on 3 November 2014, for regularization of areas in the building under construction to bring the same within the sanctioned plan, and proceed to regularize the areas, if otherwise permissible in law but without insisting upon an upfront prior payment of its share of capitalized value;

(ii) The Court Receiver is allowed to proceed with the sale of 18 unsold flats, namely, flat Nos. 1, 2, 4 to 10, 12, 15, 17, 18, 20, 25, 27, 28 and 30 and pay the sale proceeds thereof for discharge of (a) dues of Defendant No.6 corporation, (b) decretal amount of Rs.107 crores payable to the Plaintiff and (c) costs of construction as may be certified by an Architect on the Receiver's panel from time to time, in that order. Needless to add that the sales will be conducted in accordance with the consent terms and order dated 4 September 2013;

(iii) The draft agreement for sale enclosed with the Court Receiver's report is approved and accepted, subject to addition of Defendant No.5 as a party thereto and suitable corrections in the draft in connection with such addition;

(iv) The dues of M/s H Mehta & Associates in the sum of Rs.2,22,996/- may be cleared by the Court Receiver;

(v) The Court Receiver may dispose of 36 car parking spaces available at site along with 18 flats, as indicated above;

(vi) The Receiver may appoint a Chartered Accountant from his panel for the purpose of maintaining the accounts of the sale proceeds and disbursement ordered herein;

(vii) The cost of the Court Receiver's report is fixed at Rs.12,000/-. The cost of the Court Receiver so fixed together with the fees of the learned Senior Counsel appearing for the Receiver in the matter and the balance professional fees payable to M/s H. Mehta & Associates shall be discharged from the amount available with the Court Receiver in the account of the suit. The Plaintiff to put the Receiver in funds to facilitate these payments.

(viii) The Receiver's report is accordingly disposed of.

(S.C.GUPTE J.)