

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 1951 OF 2015

Sidhivinayak Constructions
: V/S :
Purva Co-operative Housing
Society & Ors.

.....Petitioner

.....Respondents

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Mr. Sanjay Jain i/by. L.D. Shah & Co., Advocate for the petitioner.

Mr. Mannadiar i/by. M/s. Mannadiar & Co., Advocate for respondent
no.1, Society.

Mr. Chirag Mody i/by. Divya Shah Associates, Advocate for respondent
no.2.

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Coram :- Smt. R.P. SondurBaldota, J.

22nd December, 2015.

P.C. :-

1). This application filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Arbitration Act" for short) seeks interim measures pending the parties proceeding for arbitration.

2). The brief statement of facts, which is substantially undisputed reads as under :-

. Respondent no.1 is a Co-operative Housing Society with 40 members occupying their respective flats. The building was constructed prior to the year 1963. It is in a dilapidated condition and has been certified so by the structural engineers. In the year 2014, respondent no.1 decided to redevelop its property and invited various offers. In the

General Body meeting held on 27th October, 2013, the petitioner was selected as the Developer by respondent no.1. The necessary “No-Objection” under the provisions of the Maharashtra Co-operative Societies Act, 1960 was received from the Registrar of the Co-operative Societies on 29th October, 2013 after which initially a letter of appointment dated 19th November, 2013 was issued to the petitioner and later agreement dated 31st December, 2014 (the Development Agreement) was executed and duly registered on 2nd January, 2015. The Development Agreement provides for allotment of a flat in the new building with additional carpet area to the extent of 36% of the carpet area of the existing flats of the members of respondent no.1 with further specifications mentioned at Clause-11 of the Development Agreement. The petitioner, after getting the building plans sanctioned from the Mumbai Municipal Corporation and receiving IOD, was to give notice of 60 days to the members of respondent no.1 to enable them to vacate the premises in their respective occupation, at which time, they were to receive the balance hardship compensation and transit compensation for a period of one year. Accordingly, after getting the building plans sanctioned and IOD issued, the petitioner issued notice dated 25th June, 2015 calling upon the members of respondent no.1 to handover vacant possession of their respective flats alongwith their keys. 37 members of respondent no.1, in response to the notice, vacated their respective

premises and handed over vacant possession alongwith the keys to respondent no.1. The remaining members i.e. respondents no.2, 3 and 4 did not vacate the premises by raising various disputes. However, after the present petition was filed, respondents no.2 and 3 also vacated their respective premises and received compensation under the Development Agreement.

3). Respondent no.2 is in possession of Flat no.31 admeasuring 490 sq.ft on the third floor of the building of respondent no.1. Today, he is the only person in occupation of the flat in the building. Because, respondent no.2 is yet to vacate the premises in his occupation, respondent no.1 is unable to handover possession of its property to the petitioner for the purpose of demolition of the building standing thereon and re-development of the property. The petitioner claims to have already incurred extensive expenses for the project. The expenses detailed are of Rs.4,44,01,245/-. Therefore, the petitioner filed the present petition on 12th October, 2015 seeking interim measures until the petitioner invokes arbitration in accordance with Clause-83 of the Development Agreement, which provides for resolution of the dispute under the Development Agreement by arbitration. The interim measures sought by the petitioner are, (i)direction to respondent no.2 to comply with the terms of the Development Agreement, (ii)direction to respondent no.2 to handover vacant possession of the premises in his

occupation, (iii) to restrain respondent no.2, *inter-alia*, from creating third party rights over the flat and restraining him from obstructing the work of redevelopment, and (iv) appointment of Court Receiver, High Court, Bombay as Receiver of the premises in occupation of respondent no.2 for the purpose of taking possession thereof and handing it over to the petitioner.

4). Respondent no.1, is in support of the petitioner.

5). Respondent no.2, contests the petition on various grounds. He denies that the building of respondent no.1 is in a dilapidated condition and contends that there is no need for respondent no.1 to undertake the work of re-development. He further alleges that, the other members of respondent no.1 have vacated their respective flats, not voluntarily but out of fear of the clause for penalty in the Development Agreement. According to respondent no.2, such penalty clause is not ordinarily found in any Development Agreement and has been inserted in the Development Agreement with intention to terrorise the members of respondent no.1 in vacating their respective flats. By the letter dated 12th June, 2014, respondent no.2 had objected to some of the clauses of the Development Agreement including the penalty clause. Thereafter, a meeting of the General Body was held on 6th July, 2014 in which it was decided by majority decision that the penalty clause in the Development Agreement would be maintained. In these circumstances, there can be

no substance in the objection raised by respondent no.2 to the penalty clause in the Development Agreement.

6). The next objection of respondent no.2 to the redevelopment is that, the various meetings of the General Body and the Managing Committee held by respondent no.1 are invalid as not properly held and the resolutions said to have been passed therein are not seen in the Minutes of the Meeting maintained by respondent no.1. He also alleges that, the Development Agreement was signed by the office bearers of respondent no.1 without placing its final draft for approval before the members of the Society. The next contention raised by the petitioner is that, the proposal for development of Strut Consultants Pvt. Ltd was better and ought to have been accepted by respondent no.1. He claims that, acceptance of the proposal of the petitioner has caused financial loss to respondent no.1 to the extent of Rs.2,72,93,362/-.

7). On a *prima-facie* view, the various objections raised by respondent no.2 are without substance. Except for respondent no.2, all the 39 members of respondent no.1 have fully supported the work of redevelopment. There has been no complaint of any nature whatsoever made by any member at any point of time. As regards the condition of the building, the opinion obtained by respondent no.1 of the Expert on its condition, will have to obviously prevail over the personal opinion of respondent no.2. Therefore, his contention that the building does not

require re-development, will have to be rejected. In any case, it is not a pre-requisite for re-development that the existing structure must be in a dilapidated condition. The members of respondent no.1, if they decide by majority, can always go for re-development.

8). The objections raised by respondent no.2 to the project of re-development, are thus seen to be without any substance. On the other hand, the obstinate conduct of respondent no.1 has put the entire re-development work in jeopardy. It would also put respondent no.1 to unnecessary and completely avoidable expenses of arbitration proceeding. Delay of a development project also has an adverse impact on the budget for re-development. Besides, the obstacles in the re-development would cause tremendous hardship to the other members of respondent and also to the petitioner. As already mentioned hereinabove, the petitioner has so far spent Rs.4,44,01,245/- on the project. It has also exerted for getting the building plans sanctioned by the Mumbai Municipal Corporation. The 39 members of respondent no.1 have vacated their respective flats and shifted to alternative temporary premises elsewhere. They would be looking forward to shifting to the new premises in the redeveloped building at the earliest.

9). The next question to be considered is, about the assertion of right by respondent no.2 in respect of the flat in his occupation. Respondent no.2, as a member of respondent no.1 cannot assert his right in respect of

the flat in his occupation, independent of the rights of respondent no.1. As a member of respondent no.1, he is bound by the agreement between respondent no.1 and the petitioner. Even as a dissenting member, he continues to be a member of respondent no.1 and must abide by the wish of the majority and go along with the others. Otherwise, he would be holding everybody else to ransom for satisfaction of his personal gains. This cannot be permitted.

3). For the above reasons, the petitioner would be entitled to interim measures to enable it to undertake and complete the work of re-development after getting possession of the property of respondent no.1. The interim measures would also be in the interest of respondent no.1 and all its members. In the facts of the case, interim reliefs in terms of prayer clauses (c) and (d) would be the appropriate reliefs i.e. to restrain respondent no.2, *inter-alia*, from creating third party rights over the flat in his occupation and appointment of Receiver of the flat for the purpose of taking its possession. Hence, the petition is allowed in terms of prayer clauses (c) and (d) as against respondent no.2 with costs. Respondent no.2 shall pay costs quantified at Rs.50,000/- (Rs. Fifty Thousand only) to the petitioner.

(SMT. R.P. SONDURBALDOTA, J)