IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO. 10789 OF 2016
with
Civil Application (st) No.10791 of 2016

1.M/s.Manisha Developers And Anr ...Appellant
Versus
1.Shri Fatehlal Mangilal And Ors ...Respondents

WITH

Appeal from Order (ST) NO. 10793 OF 2016
with
Civil Application (st) No.10795 of 2016

M/s. Manisha Developers And Anr ...Petitioners
Versus
Shri Fatehlal Mangilal And Ors ...Respondents

Mr.Suresh M.Sabrad, for the Appellants/Applicants in both Aos.

Mr.J.S.Kini i/b. Mr.Piyush Shah, for Respondent Nos.1 to 18.

Mr.S.K.Sonawane, for Respondent Nos.19 and 20 -BMC.

CORAM: G. S. KULKARNI, J.

DATED: 5th May, 2016

PC:-

1. Leave to amend to bring on record the legal heirs of Respondent No.2 - Shri.Popatlal Nagshi, who as informed by the learned Counsel for the Respondents to the learned Counsel for the Appellants, expired on 25th July,2015 during the pendency of the L.C.Suit No.2988 of

2014. Learned Counsel for the Respondents has furnished the names of the legal heirs of Respondent No.2 to the learned Counsel for the Appellant. The Appellant shall amend the appeal memo during the course of the day so as to bring on record the legal heirs of Respondent No.2.

2. By an order dated 28th April,2016 consent terms entered between the Appellants and Respondent Nos.5, 6, 7, 10, 11, 13, 16, 18 , 21 and 1 were taken on record and marked “X” for identification. These appeals were adjourned for today to enable the Appellants to finalise the consent terms between the Appellants and the remaining Respondent nos.2A, 3, 4, 8, 12 and 17. Accordingly, the learned Counsel for the Appellants and these Respondents have tendered consent terms dated 5th May,2016 which are taken on record and marked “X1” for identification. The Respondent who have signed these consent terms are present in the Court and they are so identified by the learned Counsel for the Respondents. The Respondents state to have read, understood and executed these consent terms.

3. Both these consent terms are entered between the Appellants and the private respondents being Respondent Nos.5,6,7,10,11,13,16, 18,21,1 and 2A, 3, 4, 8, 12 and 17. The Municipal Corporation is Respondent Nos.19 and the Assistant Municipal Commissioner, “T” ward is impleaded as Respondent No.20. The appeal stands dismissed against

these Respondents.

4. Apart from the settlement which is arrived between the parties, in terms of the consent terms which are taken on record, Mr.Kini, learned Counsel for the Respondents submits that there are two more occupants viz. Respondent No.9 - Kishorbhai Arjanbhai and Respondent No.10 – Kishan Mangal Barot. Mr.Kini submits that their names appear in the list as certified by the Municipal Corporation which is placed at page 268 of the paper book. The name of Respondent No.9 appears at Sr.No.32 which was struck of and replaced by the name of Smt.Ramila Parmar. The parties have agreed that Respondent no.9- Kishorbhai Arjanbhai would be entitled to a permanent alternate accommodation corresponding to the area which is in his occupation. The parties also agree that Respondent No.10- Kishan Mangal Barot is the successor of Mr.Ashwin M.Kapadia whose name has been shown at Sr.No.11 in the said list of the Municipal Corporation.

5. As regards the area entitlement of Respondent Nos.9 and 10, the learned Counsel for the Appellants and the Respondents agree that the parties will jointly measure the premises which are in occupation of these Respondents, and the Appellants shall accordingly grant a permanent alternate accommodation in favour of Respondent Nos.9 and 10 of a

corresponding area arrived at on the basis of the joint measurement. As regards one more occupant namely Smt.Ramila Parmar who is also shown to be an occupant at Sr.No.32 of the said list of the Municipal Corporation appearing at page 271 of the paper book, the learned Counsel for the Appellants submits that the claim of Smt.Ramila Parmar would also be examined and accordingly, after joint measurement of the area in her occupation, she would be given a permanent alternate accommodation of the corresponding area. The statement made by the learned Counsel appearing on behalf of the Appellants and Respondents in this regard is accepted.

5. As regards Respondent No.15, the learned Counsel for the Respondents, on instructions, submits that Respondent No.15-Mr.Bechanprasad Jamnaprasad is not available in Mumbai and he has instructions to make a statement that he is ready and willing to execute the consent terms similar to the consent terms as executed by the other Respondents. Parties are at liberty to approach the Trial Court to place on record of the trial such consent terms as would be arrived between the Appellants and Respondent No.15.

6. As regards Respondent No.14 -Mr.Raju Dave who is not a party to these consent terms dated 28th April,2016 and 5th May,2016, it is

submitted that he is available in Mumbai. The learned Counsel for Respondents submits that though he is representing Respondent No.14, however, Respondent No.14 is not agreeable to sign the consent terms as executed by the other Respondents. If that be the case, then this Appeal from Order cannot be kept pending for that reason for Respondent No.14, the issues in respect of all the other occupants/Respondents are resolved. It would be open to Respondent No.14-Mr.Raju Dave to assert his rights in the pending suit.

7. Accordingly, the Appeal from Order would stand disposed of against the Respondents who are parties to the consent terms, in terms of the consent terms arrived at between the Appellants and the said Respondents, however, with a clarification that till the demolition of the suit premises they as also any other occupants of the suit building shall occupy the suit premises at their/his/her own risks and consequences and in the event of any unfortunate incident of a collapse, they shall not hold responsible in any manner whatsoever the Appellants or the Municipal Corporation or any of its officer or any other Government agency. Ordered accordingly.

8. In the above circumstances, that almost all the Respondents have resolved the issue in terms of the consent terms except Respondent

No.14 who has not come forward to give instructions to Mr.Kini, learned Counsel who also appears for Respondent no.14, and in the light of the peculiar facts and circumstances of the case and considering the condition of the building, the impugned orders dated 2nd March,2016 and 31st March,2016 are required to be quashed and set aside even qua Respondent No14.

9. The above Appeal from orders are disposed of in the above terms. No order as to costs.

10. Civil Application (st) No.10791 of 2016 in Appeal from Order (st) No.10789 of 2016 and Civil Application (st) No.10795 of 2016 in Appeal from Order (st) No.10793 of 2016 would also not survive and the same are disposed of accordingly.

(G. S. KULKARNI,J.)