IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM APPEAL (ST) NO.21940 OF 2016
WITH
CIVIL APPLICATION (ST) NO.21942 OF 2016
IN
APPEAL FROM APPEAL (ST) NO.21940 OF 2016

Agarwal and Associates Builders
and Developers and anr …. Appellants.
V/s.
Sai Sadan Co-op Hsg. Soc. Ltd and anr …. Respondents

Mr. Shailesh Kumar Rai, for the appellants.
Mr. Ashutosh Khandeparkar, for respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 18TH AUGUST, 2016.

P.C. :

1. This appeal is preferred challenging the order dated 27th July 2016, passed by the City Civil Court, Mumbai, in Notice of Motion No.307 of 2016 in Suit No.2078 of 2015. By the said order appellants are directed to deposit an amount of Rs.1,44,58,800/- within 10 days and to pay further rent regularly on or before 17th day of every month as per consent terms dated 14.02.2015. It was further directed that only if the appellants comply with the said order, order dated 18th January, 2016 would be set aside. By the order dated 18th January, 2016, their defence was ordered to be struck off, if they failed to deposit amount of arrears of rent and further

monthly rent as agreed amongst them in the Consent Terms dated 14.2.2015.

2. The submission of learned counsel for the appellants is to the effect that the appellant has every intention to comply with the order of the trial Court, by depositing the amount as directed and as agreed by the Consent Terms. It is submitted that the appellants have already deposited an amount of Rs.69,58,800/-, in the trial Court on 9th August, 2016. As regards the remaining amount of Rs.75 lacs, it is submitted that the appellants have furnished the bank guarantee and the said bank guarantee is already encashed by the respondents herein. In view thereof, it has to be held that the appellants have complied with the order of the trial Court which was passed in pursuance of the clauses in the Consent Terms.

3. However, perusal of the impugned order passed by the trial Court, especially paragraph No.4 therein makes it clear that as regards the encashment of the bank guarantee of Rs.75 lacs, trial Court has held that it was totally a different issue and respondents had raised strong objection about the adjustment of the amount of bank guarantee of Rs.75 lacs towards the payment of arrears of rent. When this impugned order was passed by the trial Court, Civil Suit No.4018 of 2016 was pending in the Court and it was a separate suit in respect of performance of the agreement and hence the trial Court has also made observation that

during pendency of said suit, bank guarantee cannot be adjusted towards arrears of rent.

4. Now it is submitted that as the appellants have withdrawn the said suit on 3.8.2016 and as respondents have also encashed the bank guarantee of Rs.75 lacs, the said amount needs to be adjusted towards the arrears of rent which were payable to the respondents.

5. However, the record reveals that in view of the Consent Terms dated 14th February, 2016, the bank guarantee of Rs.75/- lacs was towards the performance of the agreement and not towards arrears of rent. In such situation, respondents are perfectly justified in contending that the encashment of the bank guarantee cannot and does not amount towards payment of arrears of rent and the said amount cannot be adjusted. Even in the affidavit filed in support of application of the appellants in the trial Court, copy of which is produced at page Nos.87 reveals that respondents had raised strong objection to the adjustment of the amount of bank guarantee towards the arrears of rent. It was specifically stated in paragraph No.6 of the said affidavit that the said amount cannot be adjusted in arrears of rent as rent is for payment to individual members and the bank guarantee is towards performance of the agreement. It was further stated therein that appellants were required to transfer the rent directly to the individual members and hence respondents have strong objection on adjusting the said bank guarantee

amount of Rs.75 lacs to the rent of individual members of the society.

6. In view of this specific stand taken by the respondents, trial Court has rightly observed in paragraph No.4 of the impugned order that as the said amount of Rs.75 lacs is towards rent payable to individual members, the bank guarantee cannot be adjusted into it.

7. In view thereof, the impugned order passed by the trial Court directing payment of deposit of entire amount does not call for any interference. The appeal, therefore, stands dismissed.

8. In view of disposal of Appeal itself, Civil Application (ST) No.21942 of 2016 also stands disposed of having become infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]