

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : March 28, 2016*

+ **FAO(OS) 598/2015**

**CROWN HEIGHT OWNERS
WELFARE ASSOCIATION**

..... Appellant

Represented by: Mr.C.S.Vaidyanathan, Sr.Advocate
instructed by Mr.Lalit Bhardwaj,
Advocate

versus

**M/S JACKSONS DEVELOPERS PRIVATE
LIMITED & ORS**

..... Respondents

Represented by: Mr.Ajay Kumar, Advocate for R-1
Mr.Ravinder Sethi, Sr.Advocate
instructed by Mr.Puneet Sharma
and Mr.Badal Dalal, Advocates
for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The appellant is the plaintiff and claims to be an association of persons who have purchased commercial space in a building constructed by Jacksons Developers Pvt. Ltd. on Plot No.3B/1, Twin District Centre, Sector-10, Rohini, New Delhi-110085, in respect of which, M/s.Surya Maintenance Agency Pvt. Ltd. has the right with corresponding obligations to receive money from the buyers of the commercial space and provide maintenance services in lieu thereof. Surya has in turn appointed M/s.A2Z Infa Services Ltd. as the property manager.

2. Undisputedly the buyers of the commercial space executed agreements on different dates for maintenance services to be provided and as per Article 5 thereof the maintenance charges were to have a reasonable nexus with the actual cost of maintenance with a profit of 20% to the maintenance provider. It is recorded that as of the date of the maintenance agreement charges @ ₹15/- per square foot on super area basis would be charged. Most of the agreements have been executed around September-October-November, 2011.

3. The members of the appellant paid maintenance charges @ ₹15/- per square foot on super area basis without any demur till when Surya sent a letter in the year 2014 (exact date not known to us because neither party could throw light thereon) claiming maintenance charges at the enhanced rate of ₹17.11 per square foot. In May, 2014 the appellant and its members demanded the basis for the enhanced demand and in response Surya provided cost sheet for the period April 01, 2013 till March 31, 2014 along with the ledger account showing that the cost incurred by it was being apportioned to a total super area of 1,64,331 square feet. As per the appellant, the super area of the building is 2,33,138 square feet and thus as per the appellant the maintenance charges were being overloaded. The members of the appellant unilaterally started paying ₹10/- per square foot of the super area as maintenance charges and the appellant filed a suit registered as CS (OS) No.954/2015 and along therewith filed IA No.7147/2015. In the plaint rendition of accounts was sought for. A decree in sum of ₹34,07,040/- was sought for. Mandatory injunction against the defendants was prayed that maintenance services should be handed over to the appellant.

4. Admitting the suit on April 10, 2015 and issuing summons to the defendants, IA No.7147/2015 was disposed of in the following terms:-

“IA No.7147/2015

Learned counsel appearing for defendant no.2 states that air conditioner and two lifts which were subject matter of the maintenance have started functioning. Defendant will ensure that the lift and the air conditioner unit functions properly other than any bona fide breakdown. In the meantime defendant no.2 may file details of how the maintenance charges are levied at the present rate of ₹17.11 per sq. feet per month of super area. IA stands disposed of.

If necessary, plaintiff is at liberty to file a fresh application at a later stage regarding the quantification of the maintenance charges.”

5. In compliance with the order dated April 10, 2015 the defendants have supplied to the appellant the calculations sheets.

6. Based on the calculations sheets and in harmony with the order dated April 10, 2015 disposing of IA No.7147/2015, without filing any application the appellants are aggrieved by the order dated October 07, 2015 disposing of IA No.10393/2015 filed by Surya Maintenance. In the application Surya Maintenance drew attention of the learned Single Judge to the order dated April 10, 2015 casting an obligation upon it to ensure that the lifts and the air conditioning units function properly. It pointed out to the learned Single Judge that this direction would obviously be contingent upon the members of the appellant paying to it maintenance charges @ ₹17.11 per square foot calculated on super area basis. It resulted in the impugned order dated October 07, 2015 being passed, with the learned Single Judge observing as under:-

“I.A. No.10393/2015 (u/O 39 R 4 CPC by defendant no.2)

On an oral prayer of learned Senior counsel for the defendant no.2, the present application is treated under Section 151 CPC, for clarification.

On 10th April, 2015, the following order was passed in I.A. No.7147/2015, an application under Order 39 Rules 1 & 2 CPC.

“Learned counsel appearing for defendant no.2 states that air conditioner and two lifts which were subject matter of the maintenance have started functioning. Defendant will ensure that the lift and the air conditioner unit functions properly other than any bona fide breakdown. In the meantime defendant no.2 may file details of how the maintenance charges are levied at the present rate of ₹17.11 per sq. feet per month of super area. IA stands disposed of.

If necessary, plaintiff is at liberty to file a fresh application at a later stage regarding the quantification of the maintenance charges.”

What emerges from the record is that the plaintiff is an association of the shop owners in the building Crown Heights. Members of the plaintiff had purchased the shops from the defendant no.1. Defendant no.2 is maintenance agency and the defendant no.3 is property manager of the defendant no.2. It also appears that a maintenance agreement was entered into by the members of the plaintiff with the defendant nos.2 & 3. As per agreement, maintenance charges were payable @ ₹15/- per sq/feet on super area. This agreement was entered into sometime in the year 2011. It also appears that members of the plaintiff had been paying charges at this rate and in fact, an admission to this fact can be culled out from para 8 of the plaint as also from the documents placed on record. It appears that in the month of April, 2014, maintenance charges were increased from ₹15/- to ₹17/- on super area. Being aggrieved by this increase plaintiff has approached this court.

Primary grievance of the plaintiff appears to be regular increase of maintenance charges to ₹17/-, as is also evident from the order dated 10th April, 2015.

Instead of paying maintenance charges @ ₹15/- per sq/feet, the members of the plaintiff appear to have started paying charges @ ₹10/- of their own even thereof earlier maintenance was paid @ ₹15/- from 2011 onwards. There is no mention in the earlier order regarding payment of maintenance charges @ ₹10/- in any of the earlier orders passed by the court. To provide maintenance, defendants are justified to claim maintenance charges. It may further be noted that a meeting took place between the defendant no.1, representatives of defendant no.2, President and other office bearers of the plaintiff, namely, Mr. R. N. Jalan, Mr. Shiv Kumar, Mr. Manoj Kikan and Mr. Rakesh Bansal wherein it was resolved as under:-

“1. Shoppers stop having super area of 68777 Sqft is an individual unit and the occupants are satisfied with the description as given by the maintenance agency and the expenses of shoppers is being met out by he shoppers stop.

2. It is hereby agreed that the Super Area of Shoppers is not included while calculating the maintenance cost o the other occupants.

3. Occupants have verified the expenses of Security and they are satisfied with the details provided by the maintenance agency.

4. Occupants have verified the expenses of Service Tax and they are satisfied with the details provided by the maintenance agency.

5. Occupants have verified the expenses of Maintenance and Services and they are satisfied with the details provided by the maintenance agency.

6. Occupants have verified the expenses of Insurance and they are satisfied with the details provided by the maintenance agency.

7. Occupants have verified the expenses of Salaries and they are satisfied with the details provided by the maintenance agency.

8. Occupants have verified the expenses of AMC and other facilities and they are satisfied with the details provided by the maintenance agency.

9. Occupants shall always pay impact of other charges which is paid/may be paid by the maintenance charges or is increased in future by increase in electricity charges, minimum wages or any other operational expense at any time. Maintenance agency shall increase the maintenance charges from time to time.

10. The area of basement (excluding service area in the basement) is not included while calculating the total super area of the occupant of the building

11. The occupants shall confirm about the date of payment of due maintenance charges by Monday.”

From the above Minutes, it is clear that plaintiff was satisfied about the maintenance charges.

Be that as it may, to avail the maintenance facilities plaintiff's members are required to pay maintenance charges, which they had been paying; plaintiff's members shall continue to pay maintenance charges @ ₹15/- per sq/feet.

Application is disposed of in the above terms.”

7. The grievance of the appellant is of its members being saddled with the liability to pay maintenance charges @ ₹17.11 per square foot.

8. Now, the appellant is to be blamed for the reason it allowed IA No.7147/2015 filed by it claiming an interim measure to be disposed of by an order, contents whereof we have noted in paragraph 4 above. The order is fairly perfunctory, it casts an obligation upon the defendant ignoring that the same would be contingent upon members of the appellant paying the maintenance charges, and the learned Single Judge ought to have bestowed a thought as to what maintenance charges need to be paid. This aspect has got clarity in the order dated October 07, 2015 wherein the learned Single Judge has clarified that the responsibilities of the defendants as per the order dated April 10, 2015 would be contingent upon members of the appellant paying maintenance charges in sum of ₹15/- per square foot calculated on super area basis.

9. Learned senior counsel for the appellants, with reference to the calculation sheet and also a lease by Jacksons Developers in favour of one Shoppers Stop Ltd. sought to urge that the lease-deed dated August 08, 2011, evinces 68777 square feet area let out to Shoppers Stop, free from the obligation to pay any money for maintenance and the destination of the argument is that members of the appellant are being saddled with the charges allocable to 68777 square feet area in possession of Shoppers Stop for purposes of maintenance. To which the response of the defendants is that Shoppers Stop is maintaining the area let out to it and is incurring maintenance charges i.e. area let out to Shoppers Stop is severable from the rest and that maintenance charges claimed from the members of the appellant are distributing the cost incurred by the defendants together with supervisory charges and 20% profits envisaged by the maintenance agreements.

10. In view of the fact that the appellant has not laid any crystallized pleadings before the learned Single Judge concerning whether cost

incurred for maintaining services by the defendants includes maintaining and providing services to Shoppers Stop and charges allocable thereto being passed on to the members of the appellant, we simply note that inchoate arguments requiring an inquisitorial investigation by us were advanced at the hearing held on March 23, 2016. It is not possible at this stage to render opinion one way or the other on this controversy.

11. In our opinion the appellant must avail the remedy provided in the order dated April 10, 2015 and file an application before the learned Single Judge, in terms of the liberty granted in the order.

12. Noting that under the impugned order the direction is for the members of the appellant to pay maintenance charges @ ₹15/- per square foot, we simply observe that the order conforms to the well-known principle of law that by an interim order status quo existing qua the rights of the parties and their respective positions can be altered to the detriment of a litigating party in an exceptional case. The facts noted by us show that since 2011 members of the appellant paid maintenance charges for services @ ₹15/- per square foot till April, 2014 and unilaterally reduced the amount to ₹10/- per square foot ignoring that ₹15/- per square foot was agreed in the maintenance service agreement. Thus, till it could be prima-facie established that the defendants were in breach of their fiduciary obligation and were charging an excessive amount, members of the appellant would have to pay maintenance charges @ ₹15/- per square foot on super area basis.

13. We dispose of the appeal without interfering with the impugned order dated October 07, 2015 but observing that if the appellant files an application before the learned Single Judge concerning quantification of the maintenance charges in terms of the liberty granted to the appellant vide order dated April 10, 2015 disposing of IA No.7147/2015, the same

shall be decided by the learned Single Judge as per law. We request the learned Single to decide the application expeditiously for the reason in the absence of maintenance charges being paid by the members of the appellant, it is the claim of the respondents that they are unable to pay money to the agencies with whom they have contracts for annual maintenance for lifts, generator and air-conditioning equipments.

14. No costs.

CM Nos.24774/2015, 25023/2015 & 26489/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 28, 2016
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