

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1126 OF 2017

Trishul Builders, through
Proprietor Hemant Tukaram
Buddhivant

..Petitioner.

Vs

Edwin B. Merian

.. Respondent

Mr.U.B.Nighot , Advocate for Petitioner.

Mr. Kunal Hirve i/b M.R. Dalalkar, Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 26/04/2017

PC:

1. Heard Mr.U.B.Nighot, learned counsel for the petitioner and Mr. Kunal Hirve, learned counsel for the respondent at length. Rule. Mr. Hirve waives service for the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 27.12.2016 passed by the Permanent Lok-Adalat in Pre-litigation Application No.131 of 2016. By that order, the Permanent Lok-Adalat allowed the Pre-litigation Application filed by the respondent and directed the petitioner to refund the amount of Rs. 4,70,000/- with interest at the rate of 9% per annum from the date of the Pre-litigation Application until full payment. The petitioner is also directed to pay to the respondent Rs. 5,00,000/- as compensation and costs of Rs. 3000/- as the

costs of the Pre-litigation Application and bear his own costs.

3. In support of this petition, Mr. Nighot submitted that the Respondent filed Pre-litigation Application on 6.12.2016. On the same day, notice was issued to the petitioner. Respondent collected Hamdast on 6.12.2016 and posted it on 6.12.2016 at 17 pm. He invited my attention to Exhibit-G, page 43 and 44, and submitted that there is purported remark of refusal on 7.12.2016. He submitted that the notice could not have been served on the petitioner on 7.12.2016. The Permanent Lok Adalat proceeded on the footing that the petitioner refused to accept the notice and treated it as good service on the petitioner. He submitted that the impugned order is passed in gross violation of the principles of natural justice.

4. The matter was heard at length on 19.4.2017 and at the request of Mr. Nighot it was adjourned for today for passing order as also to enable him to obtain instructions as to within what time the petitioner will pay Rs. 4,70,000/- with interest at the rate of 9% per annum from the date of Pre-litigation Application until full payment. Mr. Nighot submitted that the petitioner will pay 50% of Rs. 4,70,000/- plus interest at the rate of 9% from 6.12.2016 within two months from today and remaining 50% within four months from today.

5. On the other hand, Mr. Hirve supported the impugned order. He submitted that the respondent had paid Rs. Two lakhs in 2009

and had paid Rs. 2,70,000/- between 2009 and February 2012. The petitioner, however, did not hand over possession of the flats B-605 and B-606, in all admeasuring 1148 sq.ft. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. Mr.Hirve submitted that the respondent is present in the Court. He has tendered his photocopy of Aadhaaar Card which is taken on record and marked "X" for identification. Upon taking instructions from him, he submitted that clause 3 of operative part of the order may be set aside, thereby, restoring Pre-litigation Application before the Permanent Lok Adalat subject to the petitioner paying 50% of the amount in terms of clause (2) within two months from today and remaining 50% within four months from today. He further submitted that the matter may be listed for reporting compliance after two months and in case the petitioner does not pay the amount, the impugned order may be revived without further reference to the Court.

7. In view thereof, the impugned order is set aside subject to:

(i) the petitioner paying 50% of Rs. 4,70,000/- together with interest at the rate of 9% per annum from 6.12.2016 in terms of clause (2) of the operative part of the order to the respondent within two months from today. List the Petition for reporting compliance on 26.7.2017.

(ii) In case the petitioner does not pay 50% of the amount in

terms of clause (2) of the operative part of the order, the impugned order shall stand revived without further reference to the Court.

(iii) If the petitioner pays 50% of the amount to the respondent in the aforesaid terms within two months from today, he shall pay remaining 50% amount in terms of clause (2) of the operative part of the order to the respondent within four months from today. List the petition for reporting compliance on 26.9.2017.

(iv) In case the petitioner does not pay remaining 50% amount in terms of clause (2) of the operative part of the order, the impugned order shall stand revived without further reference to Court.

(v) If the petitioner pays the entire amount to the respondent within four months from today, the impugned order shall stand set aside and Pre-litigation Application No.131 of 2016 filed by the respondent shall stand restored to file before the Permanent Lok Adalat. The Permanent Lok Adalat will issue notices to the parties and thereafter will proceed to decide the application only as regards compensation in accordance with law.

(vi) Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)