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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 96 OF 2017
IN
CRIMINAL APPLICATION NO. 359 OF 2016

NITIN NAGARJI MEHTA

..APPLICANT.

Vs.

MANHARLAL C. SHAH & ANR.

...RESPONDENTS

Ms. Mallika Ingale for Applicant.
Mr. Jayesh Vyas for Respondent No.1.
Mr. Prashant Jadhav, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 3rd October 2017.

P.C.

1] By the present application, the applicant is seeking permission to deposit Rs.19.00 lakhs with interest @ 18% p.a from the date of its deposit till realization. The applicant is original applicant in Criminal Application No.359 of 2016 filed before this Court and original respondent No.2 in Complaint Case No.CC/20/2005 before the Consumer Disputes Redressal Commission, Mumbai (for short "Commission").

2] Heard the learned Counsel for the applicant, the learned Counsel for the original complainant/respondent No.1 and the learned APP. Perused the Orders passed in CC No.20/2005 and in Execution Application No.10 of 2013 by the Commission as well as Orders passed by this Court in Criminal Application No.359 of 2016 and the instant application.

3] The respondent No.1 in the present application is the original complainant before the Commission in the said complaint. The respondent No.1-complainant had filed the said complaint before the Commission pertaining to alleged deficiency in service on the part of the developer/builder i.e. applicant herein for not handing over possession of the flat which was agreed to be sold by him. The said Commission by its Judgment and Order dated 3rd February 2012, while allowing the said complaint partly, had directed the applicant to hand over possession of the flat in question namely Flat No.702, “C” Wing, 7th floor, in building known as “Emrald Court”, J.B. Nagar, Andheri (East), Mumbai-400058 having 732 sq.ft. carpet area to the complainant/respondent No.1 and the respondent No.1 to receive the same. By the said Order, it was further directed that, while giving the possession, compliance of handing over the Occupation Certificate to the complainant be ensured by the opponents/applicant herein and further to see that flat is supplied with

water and electricity supply. The applicant was directed to pay compensation of Rs.1.00 lakh to the respondent towards mental torture vis-a-vis delay in handing over the possession.

4] As the applicant did not comply with the said Order dated 3rd February 2012 within reasonable period, the respondent No.1 herein filed execution proceedings bearing Execution Application No.10 of 2013 before the Commission. The said application came up for final hearing before the said Commission on 13th June 2016 when the Commission by its Order dated 13th June 2016 has in para-2 and 3 ordered as under:

“2. In execution application in defence the opponents have stated that they (the opponent) cannot give possession of the flat (aforesaid flat) because the opponent sold the flat to third party. This cannot be valid excuse for non-compliance of the final order passed by this Commission. Ld. Advocate for the Opponents has sought to adduce some copies of documents to pray for time for compliance of final order, tried to show deed of rectification (photostate copy), we are not impressed by such evasive submissions in respect of final order passed by us. Once order is made final, passed by the State Commission, it is duty of the opponent to obey it and no such execute can be pleaded which cannot be acceptable by any reasonable prudent person; the accused has to undergo jail custody. There is long standing tendency on the part of the builders/developers in city of Mumbai and Suburban areas to enter into agreement in respect of innocent flat purchaser and then to create interest in third parties, inter alia, with a view to avoid statutory

obligations under Maharashtra Ownership of Flats Act, 1963 ("MOFA" in short). According to law we cannot accept any such excuse for non-obedience of the final order which was passed by us long back on 3rd February 2012. When final order despite challenged in superior Forum or Court remains final there can be no excuse for non-compliance thereof by the opponents. Hence, once it is brought to our notice that final order is not yet obeyed deliberately though understood by the opponent. Possession of the flat is not given as directed, we have no other option to remand opponent/accused Mr. Nithin Mehta to imprisonment with a direction that until and unless final order is complied with the opponent/accused shall remain remanded to the jail custody and shall be sent to undergo imprisonment alike civil detainee in the jail.

3. We make it clear that in the event opponent want to comply with the final order, reference be made to us through the Superintendent of Jail concerned and Complainant, if reports compliance of final order, we can immediately consider releasing the opponent/accused from detention. The jail custody shall continue for a period of three years maximum period unless and until final order is complied with by the opponents in view of Section 27 of the Consumer Protection Act, 1986."

5] After passing the said Order dated 13th June 2016 by the Commission, the applicant was immediately remanded to imprisonment. The record clearly indicates that, the applicant herein after the pronouncement of Order dated 13th June 2016 by the Commission,

immediately moved this Court under Section 482 of Cr. P.C. by filing Criminal Application No.359 of 2016. On 13th June 2016, the learned Counsel for the applicant on instructions from the son of the applicant who was present in the Court submitted that, the applicant be released on bail for a period of ten days with a view to enable him to settle the matter with the original complainant once for all. This Court after taking into consideration the pleadings of the learned Counsel for the applicant by the said Order dated 13th June 2016 directed the applicant to be released on bail on certain conditions. It was made abundantly clear that if the applicant fails to honour his statement within a period of ten days from the date of the said Order, the Order passed in aforesaid CC No.20/2005 by the aforesaid Commission dated 3rd February 2012 will come in operation.

6] When the applicant was on bail, the applicant and the original complainant/Respondent No.1 herein entered into settlement and on 9.8.2016 submitted Consent Terms dated 5th August 2016 in Criminal Application No.359 of 2016. Thereafter, by an Order dated 9th August 2016 the said Application No.359 of 2016 was allowed by this Court in view of the Consent Terms dated 5th August 2016.

The record clearly discloses that the applicant herein failed to comply with the Consent Terms and also did not adhere to the

Undertakings given to this Court, as recorded in Order dated 9th August 2016 and instead has filed the present application with a prayer as noted in para No.1 hereinabove.

7] After perusing the Order dated 3.2.2012 passed by the Commission, it clearly appears that, it nowhere postulates or directs the applicant to pay an amount of Rs.19.00 lakhs. The Order passed by the said Commission in unequivocal terms directs the applicant to hand over possession of Flat No.702, C Wing, Emerald Court, Andheri (East) having carpet area of 732 sq.ft. with other conditions as stated hereinabove and therefore there is no reason for the applicant to file the present application on the said misconceived notion.

8] The present application initially came up for hearing on 4th May 2017, when the learned Counsel for the applicant made a statement that the applicant is unable to comply with undertaking given in para-5 of the Consent Terms dated 5th August 2016, however, the applicant is ready and willing to pay the cost of the flat admeasuring 732 sq.ft of carpet area in the vicinity of J.B.Nagar, Andheri as per the ready reckoner valuer. The learned Counsel for the respondent No.1 however had contradicted the said statement and submitted that his client was not agreeable to the said suggestion as value as per ready reckoner of the said carpet area of 732

sq.ft is much lesser than market value in the vicinity of J.B. Nagar, Andheri. He therefore submitted that his client will get the valuation of the flat having 732 sq.ft carpet in the said vicinity from a Approved Valuer.

9] Accordingly the respondent No.1 got a valuation report from the Approved Valuer namely M/s Nanavati Industrial Consultants, Mumbai dated 12.6.2017. The said Valuer has opined that the market value of the said flat would be around Rs.1.73 Crores and the value as per Ready Reckoner would be around 1.06 Crores. The said report was produced before this Court on 3rd July 2017, when the learned Counsel for the applicant disputed the said valuation and therefore this Court by an Order of even date appointed Mr. Suhas T. Pingal, who is on the panel of Valuers of the High Court calling for a fresh report. The said Valuer Mr. Suhas Pingat submitted his valuation report dated 19.7.2017 wherein he has opined that, based on the average market rate i.e. of Rs.21,500/- per ft. carpet area, valuation of the flat admeasuring 732 sq.ft carpet in the said vicinity would be Rs.1,57,38,000/-(One Crore Fifty Seven Lakhs and Thirty Eight Thousand)

10] The record further indicates that, the applicant thereafter on various occasions sought time to settle the matter with the respondent No.1/original complainant. However, for one reason or other, the applicant

did not comply with statement recorded in the earlier Orders. This Court extensively heard the present matter on 11th September 2017. The learned Counsel for the applicant on instructions from the son of applicant with a view to put an end to the present matter made a statement that the applicant was ready and willing to pay an amount equivalent to 732 sq.ft. carpet area @ Rs.30,000/- per sq ft. to the respondent within a period of 2 weeks from 11.9.2017 without fail. Today again the applicant through his Counsel wants further time either to deposit the amount or to give alternate premises/flat to the respondent No.1.

It is also suggested by this Court to the applicant to make upfront payment of Rs.1,57,38,000/-(One Crore Fifty Seven Lakhs and Thirty Eight Thousand Only) as per High Court Panel Valuer's report, to which applicant was not ready and further sought time on the ground of settlement and/or to make payment.

11] Resume of the aforesaid chronology would clearly indicate that, the applicant was never interested in settling the matter or satisfy the decree passed by the Commission. He initially made statement for settlement of matter on 13.6.2016 only with a view to be released on bail. The applicant never had intention to comply with the decree passed by the aforesaid Commission dated 3rd February 2012 and with a view to avoid

incarceration, he made statement before this Court on 13th June 2016 that, he be released on bail for a period of 10 days with a view to enable him to settle the matter with the original complainant/respondent No.1 herein once for all. This clearly indicates that the applicant only wants to evade and dodge the jail custody and has scant respect for his own undertakings given to this Court.

12] After taking into consideration the aforesated conduct of the applicant, I am of the considered opinion that the applicant with dishonest intention firstly made statement before this Court on 13th June 2017 for seeking bail on the ground of settlement with the respondent No.1 and thereafter dishonestly did not comply with Consent Terms dated 5th August 2016, on the basis of which this Court had allowed Criminal Application No.359 of 2016. The applicant thereafter again filed the present Criminal Application No.96 of 2017 for deposit of Rs.19.00 lakhs in the Registry of this Court. As stated in para No.7 above the said amount is nowhere mentioned in the original decree passed by the Commission.

13] After considering the facts and circumstances of the present case, the modus operandi adopted by the applicant and his conduct, in view of the ratio laid down by the Supreme Court in the case of Popular Muthiah Vs. State represented by Inspector of Police reported in (2006) 7 SCC 296

by invoking the inherent jurisdiction under Section 482 of Cr. P.C. and in the interest of justice, the following Order is passed:

(a) Orders 13th June 2016 and 9th August 2016 passed in Civil Application No.359 of 2016 are hereby recalled.

(b) In view of dismissal of Criminal Application No.359 of 2016, the Criminal Application No.96 of does not survive and the same is also dismissed.

(c) Orders dated 3rd February 2012 passed in Complaint No. No.20/2005 and 13th June 2016 passed in Execution Application No.10 of 2013 passed by the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai are hereby restored and the applicant is directed to surrender to the jail custody forthwith as is directed by the said Commission by its Order dated 13th June 2016.

(d) If the applicant fails to comply with Order dated 13th June 2016 passed in Execution Application No.10 of 2013, the respondent No.1/original complainant - Shri Manharlal C. Shah is at liberty to adopt all appropriate legal proceedings for compliance of Order dated 13th June 2016 passed by the Commission.

(A.S. GADKARI,J.)

