

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 242 OF 2016

R. S. Builders and Developers	..Appellant
Versus	
The State of Maharashtra and anr.	..Respondents

Mr. A. M. Vernekar, advocate for the appellant.
Ms. S. D. Shinde, APP for the State.
Mr. Mohammed Hussain Mohammed Ismail Khatkhatay, respondent
No.2 in person.

**CORAM : RANJIT MORE,
A. M. BADAR, J J.**

DATE : 9th MARCH, 2017.

P. C. :

Heard learned counsel for the petitioner, learned APP and respondent No.2 in person.

2. By way of this appeal, the appellant is challenging the orders dated 11th January, 2016 passed below miscellaneous application Nos.13 of 2014 and 430 of 2015 by the learned Special Judge, MPID Court at Greater Mumbai. By the order passed below miscellaneous application No.13 of 2014, the Court ordered release of the subject flat from attachment subject to appellant depositing an amount of Rs.52,00,000/- within two weeks. By a separate order passed on the same day, miscellaneous application No.430 of 2015 came to be rejected.

3. The appellant is a builder/developer and is the owner of the flat in question viz. flat No. 503, 4th floor of the building on survey No.76/1, Nagashetty Halli, Village Kasba, Hubli, Bangalore (North). Respondent No.2 agreed to purchase this flat for an amount of Rs.13,16,285/- in or about 1997 and it is undisputed case, that out of the said amount, an amount of Rs.11,50,000/- was paid to the appellant by respondent No.2. The transaction, however, could not be completed as respondent No.2 did not deposit the balance amount with the appellant.

4. Meanwhile, a case was registered against respondent No.2 under various provisions of the MPID Act. It was transpired that the amount, which was deposited by respondent No.2 with the appellant for purchase of the flat in question, was the proceeds of crime and, therefore, notice was issued to the appellant on 26th February, 2002 as to why the said flat should not be attached and subsequently, the said flat was also sealed. The appellant, thereafter, filed an application before the MPID Court being miscellaneous application No.328 of 2002 for release of the said flat from attachment. By the order dated 16th August, 2002, the MPID Court passed a conditional order and directed release of the said flat from attachment subject to the appellant returning the amount of Rs.11,50,000/- to the Court within a period of two weeks from the date of the order. The appellant did not deposit the said amount

and, therefore, the flat in question remained under attachment. In the year 2014, the appellant filed an application being miscellaneous application No.13 of 2014 seeking direction to the Investigating Officer, GB CB CID, Mumbai to accept the amount of Rs.11,50,000/- and, thereafter, release that flat in question from attachment. This application was disposed of by MPID Court by directing release of the said flat from attachment subject to appellant depositing an amount of Rs. 52,00,000/- within two weeks.

5. The appellant had also filed miscellaneous application No.430 of 2015 for modification of order dated 28th August, 2015. By the said order, the statement of the appellant's lawyer was recorded that the appellant was ready to buy back the said flat for an amount of Rs.52,00,000/-. The contention of the appellant in this regard is that he never authorized his lawyer to make such a statement and without specific instructions his lawyer could not have made such a statement before the Court.

6. By the impugned order passed in miscellaneous application No.13 of 2014, the MPID Court released the said flat from attachment subject to the appellant's depositing the amount of Rs.52,00,000/- within two weeks on the assumption that the market price of the said flat is

Rs.65,00,000/- and the appellant's lawyer showed willingness to deposit Rs.52,00,000/- . Learned counsel for the appellant stated that the market price of the said flat, at the time of passing of the impugned order, was not Rs.65,00,000/- and he relied upon the sale deeds of the flats in the building in which the said flat is situated. Relying upon those sale deeds, the appellant's counsel submitted that the market price of the subject flat is not more than Rs.40,00,000/- to Rs.42,00,000/-. The appellant disputed that he had given any authority to his lawyer to make a statement regarding buy-back price of the subject flat. The learned counsel for the appellant has relied upon the decision of the Apex Court in **Himalayan Co-operative Group Housing Society versus Balwan Singh and ors.(2015) 7 SCC 373** in this regard. It is the specific case of the appellant that there was no authorization to his lawyer to make a statement before the MPID Court regarding buy-back price.

7. The Apex Court in **Himalayan Co-operative Group Housing Society versus Balwan Singh and ors. (supra)** has made the following observations in paragraph 22 :

"22.The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement...."

The above observations makes it clear that without specific authorization, a lawyer has no implied or ostensible authority to bind is client to a compromise and/or settlement. The appellant specifically denied that his lawyer was given an authority to make a statement that the appellant is willing to deposit the amount of Rs. 52,00,000/-. Even learned APP or respondent No.2 could not point out anything on record to show that the appellant's lawyer was specifically instructed to make an offer regarding buy-back price of the subject flat. So far as the market price of the said flat is concerned, there are two versions. According to the appellant, the market price is about Rs.40,00,000/- to Rs.42,00,000/- and, according to the investigating officer, the market price is about Rs.65,00,000/-.

8. Be that as it may be, it is the specific case that respondent No.2 deposited with the appellant an amount of Rs.11,50,000/- towards part-payment of the purchase price of the flat in question. The fact remains that the transaction was not complete and the appellant has not lost ownership of the said flat. It is the case of the investigating officer that the amount of Rs.11,50,000/- paid by respondent No.2 to the petition is the proceeds of crime and, therefore, earlier by an order dated 16th August, 2002, this Court directed the appellant to deposit the said amount for release of the subject flat and this amount was not

deposited by the appellant and, therefore, subsequent applications were filed, on which, the impugned orders are passed.

9. Learned counsel for the appellant, at this stage, submitted that without going into the market price of the subject flat, he is ready and willing to deposit an amount of Rs.11,50,000/-along with 12% interest p.a. from 1st September, 2002 and on depositing this amount, the subject flat may be released from attachment.

10. Learned APP, on instructions, stated that appropriate order may be passed taking into consideration the pendency of the proceedings before the MPID Court. and whatever amount, the appellant would deposit is required to be distributed to investors. Respondent No.2 who is present in person stated that the appellant be directed to deposit Rs.52,00,000/-.

11. Since the appellant has not lost the ownership of the flat in question inasmuch as the transaction of the sale deed with respondent No.2 was not complete and admittedly, what the appellant received from respondent No.2 was the amount of Rs.11,50,000/-, in our opinion, that much amount, the appellant is bound to deposit in the proceedings before MPID Court and, since this amount is delayed, the appellant is

also required to pay interest at market rate. In our opinion, the market price of the flat in question may not be relevant factor to arrive at the conclusion as to how much amount the appellant should deposit.

12. In the above circumstances, we are inclined to release the subject flat viz. Flat No. 503, 4th floor of the building on survey No.76/1, Nagashetty Halli, Village Kasba, Hubli, Bangalore (North) from attachment subject to the appellant depositing the amount of Rs.11,50,000/- received from respondent No.2 along with interest @12% p.a. from 1st July, 1997 till the date of this order within four weeks from today. The said amount shall be deposited in SPI GB CBCID –Barkat Scheme. Consequently, the impugned orders are quashed and set-aside. Miscellaneous Application Nos.13 of 2014 and 430 of 2015 are disposed of in above terms.

13. The criminal appeal stands disposed of in the above terms.

(A. M. BADAR, J.)

(RANJIT MORE, J.)