

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 137 OF 2017
IN
REVIEW PETITION NO. 6 OF 2017
IN
APPEAL FROM ORDER NO. 299 OF 2014

Mrs. Vijaya Ramchandra Gurav .. Applicant/Petitioner
Original Plaintiff
versus

M/s. Malde Properties Pvt. Ltd. & Ors. .. Respondents

Ms R. S. Gurav for Applicant / Petitioner.
Mr. A. Basutkar with Mr. Aniket Ransuble for Respondent No.1.
Mr. A. Patil i/b. Mr. V. Patil for Respondent No. 3.

CORAM : M. S. SONAK, J.
DATE : 17 NOVEMBER 2017.

P.C. :-

- 1] Heard Ms Gurav for the applicant and Mr. Ajay Basutkar for respondent no. 1.
- 2] There is sufficient cause shown in the civil application for condonation of delay of 38 days. Accordingly, delay is condoned and civil application is disposed of.
- 3] This is a petition instituted by the original appellant seeking review of order dated 18th January 2017 disposing of appeal from order no. 299 of 2014 and civil application no. 352 of 2014.

4] The operative portion of the order dated 18th January 2017 is contained in paragraph 13 and the same reads as follows :

“13] The appeal from order is, therefore, disposed of with the following order:

a] For a period of 16 weeks from today, the respondents shall not evict the appellant from the suit premises;

b] If within period of 16 weeks Annexure-II is not modified, the appellant will have to vacate the suit premises and shift into structure No.7, which is already ready for allotment to the appellant as per existing Annexure-II;

c] If Annexure-II is modified in the meanwhile and some other structure is allotted to the appellant, respondent No.1 shall ensure that the appellant is accommodated in such structure as per the modified Annexure-II, before any of the respondents proceed to secure the vacant possession of the suit structure;

d] The vacation of the suit structure and the occupation of structure No.7 or such other structure by the appellant, if Annexure-II is modified in the meanwhile, shall be without prejudice to the appellant's rights and contentions in the suit or any other proceedings which she may have instituted. Therefore, respondent No.1 shall not insist that the appellant signs any agreements or otherwise gives up her rights and contentions pending disposal of the suit or such other proceedings which the appellant may have initiated;

e) Since, a period of 16 weeks has been granted to the appellant to secure modification of Annexure-II, even though, the appellant was requesting for 12 weeks, it is made clear that if the appellant is unable to obtain modification of Annexure-II within a period of 16 weeks from today, the appellant shall, without any further objections, vacate the suit structure and shifts into structure No.7. If this is not done, the respondents shall be entitled to take appropriate actions for ensuring compliance;

f) The aforesaid arrangement shall operate during pendency of the suit and shall therefore be subject to further

orders that shall be made in the suit; and

g] All contentions of all parties are kept open to be determined by the Trial Court in the pending suit."

5] This review petition was instituted with the complaint that the structure no. 7 in which, the appellant was required to shift was neither complete nor habitable and therefore, the direction for shifting would have to be deferred. At this stage, Ms Gurav, appearing for the appellant, had placed on record certain photographs to indicate that the structure was far from complete. In fact, at that stage, there were certain metal railings found to have been affixed in front of the structure. The photographs bear the date 22nd February 2017 and are a part of the record.

6] Appreciating the submissions made by Ms Gurav, notices were issued to the respondents and in the meanwhile, the time granted to the appellant to vacate her original structure and shift into structure no. 7 was extended. Since there was some issue of service upon the respondents, extensions were granted from time to time to enable the appellant to continue to reside in her original premises and not to shift into structure no. 7.

7] Ultimately, the respondent no. 1, put in appearance. The respondent no. 1 was directed to file a detailed affidavit in reply together with photographs to indicate the precise position and status of the structure in which, the appellant was required to shift.

8] After adjournments, affidavit in reply has been filed by one Yogesh Nathalal Shah, authorised signatory of respondent no. 1,

together with the photographs, which is at pages 181 to 220 of the paper book of the review petition.

9] In the affidavit in reply, there is a clear statement that structure no. 7 corresponds to shop no. 11 in the building which is now complete in all respects. It is stated that shop no. 11 is now ready for allotment but only the final touch up and the final hand of colour is pending, which is normally done when the electric fittings are complete. It is stated that normally, the floor is cleaned by acid just before handing over the possession. In paragraph 9, it is stated that the shop no. 11 can at any time, be handed over to the appellant.

10] In the affidavit, several allegations are also made against the appellant. Some of the allegations made by the appellant are also responded. For the purposes of this review petition, there is no necessity to advert to these allegations and counter allegations. The photographs of the building and of shop no. 11 which is to be allotted to the appellant are placed on record at pages 189 to 194 of the paper book of this review petition. The photographs, correspond to the statements in the affidavit in reply.

11] Ms Gurav, learned counsel for the appellant further submits that originally, the appellant was to be allotted structure no. 3 and not structure no. 7. Apart from the aforesaid, Ms Gurav has referred to certain documents which are at pages 145, 146, 147 and 148 of the paper book of the review petition to emphasize that what was to be allotted to the petitioner was structure no. 3 and not structure no. 7. She reiterates that the order dated 18th January 2017 is vitiated

by an error apparent on face of record since, the order, makes reference to structure no. 7 and not structure no. 3. She submits that since this aspect has not been taken into consideration there is an error apparent on face of record.

12] In the alternate, Ms Gurav submits that the order dated 18th January 2017 clearly records that what is to be allotted to the appellant is structure no. 7. However, now what is proposed to be allotted to the appellant is shop no. 11. She submits that from this it is clear that structure no. 7 is still not ready and therefore, order dated 18th January 2017 is liable to be reviewed. She submits that the respondent no. 1 has committed a serious fraud not only on the appellant but also on this Court by giving an impression that the shop in question was ready for allotment even at the stage when the order dated 18th January 2017 was made. She submits that even after this review petition was filed for a period of almost six months, no affidavit was filed. She points out that the photographs produced by her at the stage of instituting the review petition have not even been disputed and such photographs bear the date about which, there can be no real dispute. She submits that serious action is required to be taken against respondent no.1 for having played fraud not only on the appellant but also on this court.

13] Ms Gurav submits that there is no material on record to indicate that structure no. 7 corresponds to shop no. 11. In this regard, she makes particular reference to the document at Exhibit 'D' annexed to her affidavit in rejoinder (page 241 of the paper book), in which, as against structure no. 11 name of one Munshilal Jangli Kanojia is indicated. She submits that if now the appellant is

required to accept shop no. 11, then, in all probabilities this Munshilal Jangli Kanojia will raise objections on the ground that this structure already stands allotted in his favour. Ms Gurav submits that this is yet another ground to review the order dated 18th January 2017.

14] Even if all the contentions of Ms Gurav are to be considered, none of them, qualify the description of any error apparent on face of record. The attempt obviously was to re-argue the matter and prolong the vacation of the original structure, which is already ordered to be demolished. That apart, the order dated 18th January 2017, very clearly, makes reference to structure no. 7 which was to be allotted to the petitioner. This was, after considering the submissions in the context of the allotment of shop no. 3 and the shop at sr. no. 7. There is really no case made out to once again revisit the issue and alter the directions in the order dated 18th January 2017.

15] This review petition was entertained and some interim reliefs were granted to the petitioner mainly because this court was impressed with the submission that even the shop at structure no. 7 was incomplete and in such circumstances, it would not have been fair or proper to require the appellant to comply with the directions in the order dated 18th January 2017. There appears to be substance in the contention of Ms Gurav that the shop / structure in question was not complete. This is because Ms Gurav had produced photographs bearing dates on record. There is no serious contest in the affidavit in reply filed by the respondent no. 1 of this position. To that extent, Ms Gurav is right in her submission that the

respondent no. 1 should have been more candid to the Court and stated with clarity within which period, the shop in question would be ready in all respects so that, the appellant could move therein.

16] Be that as it may, now a detailed affidavit has been filed by the respondent no. 1 together with photographs. It is not as if the appellant was prejudiced because the new premises may not have been complete in all respects. In the meantime, the appellant was permitted to and the appellant continued to occupy the original structure, which is precisely, the appellant wanted.

17] There is no merit in the confusion sought to be now created that structure no. 7 does not correspond to shop no. 11. From the record, it is quite clear that structure no. 7 corresponds to shop no. 11. This is evident from the dimensions and from the area. In any case, this can hardly be a ground for institution of a review petition.

18] Ms Gurav, then contended that if the building in question is complete as is evident from photograph at page 190, then, there is absolutely no reason to demolish the structure which the appellant presently occupies. Again, this submission is quite misconceived.

19] It is apparent that the appellant does not want to vacate the structure which she presently occupies and that is perhaps one of the real reasons for instituting the review petition. No doubt, the other reason for instituting the review petition is possibly the fact that the respondent no. 1 had not completed the structure / shop to be allotted to the review petitioner. That can be regarded as a genuine reason but not the former. Accordingly, there is no case

made out to review the order dated 18th January 2017 except, to a limited extent of now modifying the time lines.

20] The appellant, is granted further four weeks time to shift to shop no. 11 which corresponds to structure no. 7 in terms of the order dated 18th January 2017. In case, the appellant does not shift to the alternate structure no. 7 which corresponds to shop no. 11 as indicated in the affidavit in reply of respondent no. 1, the consequences indicated in the order dated 18th January 2017 shall follow.

21] Since, the respondent no. 1, was not as candid as he ought to have been to the Court, the respondent no. 1 is directed to pay costs of Rs.15,000/- (Rupees Fifteen Thousand) to the appellant within a period of four weeks from today. Such costs may be deposited in this Court and thereafter, the appellant, will have liberty to withdraw such costs unconditionally.

22] With the aforesaid observations, this review petition is disposed of.

(M. S. SONAK, J.)