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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 499 OF 2017
IN
APPEAL FROM ORDER NO. 668 OF 2007

Tejukaya Corporation, a partnership firm	...Applicant
<i>Versus</i>	
Ashish Jayantilal (Sangoi) Shah & Ors	...Respondents

Mr Ashish Kamat, *with Punit Damodar & Nikita Vardhan, i/b Kana & Co., for for the Applicant.*

Mr Bhavin Gada, *i/b Harakchand & Co., for the Appellant.*

Mr Uday P Warunjikar, *for Respondent No. 3.*

CORAM: G.S. PATEL, J

DATED: 4th July 2017

PC:-

1. The Civil Application seeks that the Court Receiver appointed by this Court by an order dated 29th November 2007 in a group of three Appeals from Order (668 of 2007, 669 of 2007 and 670 of 2007) be directed to deliver physical vacant possession of Shop No. 11, Tejukaya Mansion, Dr Babasaheb Ambedkar Road, Lalbaug, Mumbai 400 012 to the Applicant to enable it to carry on redevelopment work. The Applicant also seeks directions that the Court Receiver be directed to execute necessary documents for redevelopment.

2. The Applicant is a third party. This group of Appeals was disposed of. The Appellant was the original 3rd Defendant in S.C. Suit No. 5126 of 2000. The Plaintiff in that Suit is the 1st Respondent in the Appeal. The 2nd Respondent in the Appeal was the original 1st Defendant and the 3rd Respondent was the original 2nd Defendant. By my order dated 21st June 2017 I briefly noted the background. Paragraphs 2, 3, 4 and 5 reads thus:

"2. The Civil Application sets out the history of this litigation. There were three Motions before the Court below. A common order dated 14th June 2007 was the subject matter of the Appeal. Ultimately, by an order of 29th November 2007 that order was set aside and the High Court in Appeal appointed the Court Receiver as receiver of the premises, a shop in an old building constructed in 1910. The Court Receiver took possession on 26th December 2007. He conducted an auction for a bid to appoint an agent to run the shop and the business. The 3rd Respondent (2nd Defendant) was the highest bidder, and was appointed as an agent of the Receiver. She did not execute a Agency Agreement or take possession. The Court Receiver continued, but without any of the parties as his agent. Meanwhile, the Suit itself was dismissed for non-prosecution. There is then an order of 29th January 2013 in these Appeals stating that the 1st Respondent (Original Plaintiff) was not interested in the suit premises.

3. The condition of the building has in the meantime continued to deteriorate. There were 96 residential flats, 18 shops and 7 stalls in the occupation of about 700 occupants. The building is dilapidated. All the occupants have vacated except the Court Receiver. The application is, therefore, by a partnership firm which seeks possession from the Court Receiver so that construction and

redevelopment may be taken up and completed. Mr Kamat for the Applicants clarifies that the Court Receiver will be given possession of premises in the reconstructed building.

4. Mr Warunjikar for Respondent No. 3 seeks time to take instructions and to file a vakalatnama.

5. Mr Gada appears for the heirs of the Appellant, who has in the meantime passed away. Before any other steps are taken, and even given that this is the disposed of Appeal, in order to make an effective order on the applications, the title will have to be amended. Leave to the Appellant's Advocates to amend the cause title in the Appeal to bring on record the heirs of the Appellant. Corresponding changes will be made in the Civil Application itself. All amendments to be carried out without need of reverification by 28th June 2017."

3. Thereafter, the Applicants have filed a further Affidavit dated 29th June 2017. There is also today given to me a revised colour plan which I am taking on record and marked "X1" for identification with today's date. The Affidavit is filed by one Mr Pranav Tejookaya, partner of the Applicant firm. In paragraph 3 he states that between them, the earlier partners of the partnership firm of M/s. Amar Shoes use to occupy this Shop No. 11. On redevelopment Shop No. 16 shown in pink on the plan given to me today is to be allotted. The new premises are approximately 414.14 sq ft in area. Paragraph 5 makes it clear that the shop is spread over two levels, ground and first. The drawing indicates clearly an internal staircase.

4. There is a hardship compensation payable of Rs. 68,524/- per month and corpus fund payable to the Society, of Rs. 2,11,000/-. The hardship compensation will be deposited with the Court Receiver month to month. Every three months the amount so collected will be invested in a fixed deposit with any nationalized bank.

5. The undertaking in paragraph 6 of the Affidavit reads thus:

"6. The Applicants hereby undertake to this Hon'ble Court that they shall not create third party rights of any nature whatsoever in respect of the new premises at any point of time during the process of re-development or otherwise. Further, the Applicants hereby undertake to this Hon'ble Court that they shall handover quiet vacant and peaceful possession of the new premises upon completion of construction of the redeveloped building and receipt of the Occupation Certificate in respect thereof from the statutory authorities only to the Court Receiver."

This undertaking is accepted as an undertaking to the Court.

6. It is clarified that the entrance to compound is directly from Dr Babasaheb Ambedkar Road at the northern end of the plot. There is also a second entry through a common driveway which is further south of the entry point mentioned and roughly in the middle of the plot, and the access to the building is off this driveway (i.e. not directly from Dr Babasaheb Ambedkar Road).

7. The Receiver will execute necessary documents and will also coordinate with the Applicants' Advocates to have them registered. Copies will be made available to the Appellants' and 3rd Respondent's Advocates. The original documents will be retained with the Receiver pending further orders.

8. Possession of the new premises in the redeveloped building will be taken by the Court Receiver who will then make a further report about delivering possession to one of the rival parties claiming to be entitled thereto. For the present, none of the parties will be put into physical possession of the premises in the redeveloped building without a specific order of the court.

9. The Appellants and Respondent No. 3 have each adopted separate proceedings in the Bombay City Civil Court and Court of Small Causes respectively. The Court Receiver is, of necessity, a pro-tem arrangement and has been arrived at so that the redevelopment is not delayed or held up. This order will not affect the decision on merits of either of those proceedings. In fact the question of delivery of possession will also take into account the outcome of those proceedings or the progress of those Suits.

10. The Receiver will deliver possession of Shop No 11 to the Applicants within one week of the Receiver executing an agreement for permanent alternate accommodation in accordance with the format at Exhibit "H".

11. The Civil Application is disposed of in these terms. There will be no order as to costs.

12. Liberty to the parties to apply.

(G. S. PATEL, J)