

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application NO. 416 OF 2016

IN

Civil Revision Application NO. 885 OF 2013

Shyam Nivas Co-operative Housing Society Ltd ...Applicant

In the matter between

Rangbiharilal A Goel & Ors.

...Applicants

vs.

1. Shyam Nivas Co-operative Housing Society Ltd.

and ors.

...Respondents

Mr. Mayur Khandeparkar with Mr. Ameya Deosthale with Viloma Shah and Dhiren Durante i/b. Hariani & Co., for the Applicant.

Mr. P. Ranjan i/b. Halai & Co., for the Respondents..

CORAM : G. S. KULKARNI, J.**DATE : DECEMBER 19, 2017**

P.C.:

By an order dated 23 July 2014 the Civil Revision Application was admitted. The impugned order dated 20 September 2013 as passed by the appellate bench of the Small Causes Court was stayed with a further direction that the petitioner nos. 1 to 3 shall not create any third party rights, title and interest in the suit flat. Further a liberty was granted to the applicant-society to file an application for fixing of interim compensation, which would be decided on its own merits. Accordingly, the applicants - decreeholders have filed the present application making the following

prayers:-

“a) That pending the hearing and final disposal of the Civil Revision Application, this Hon'ble Court be pleased to direct the Obstructionists, to pay to the Society monthly compensation calculated at the rate of Rs.81,184/- (Rupees Eighty One Thousand One Hundred and Eighty Four only) per month or at any other rate this Hon'ble Court may deem fit and proper for the period from 20 September 2013 to 31 December 2013 or such other date as this Hon'ble Court may deem fit and proper;

b) That pending the hearing and final disposal of the Civil Revision Application, this Hon'ble Court be pleased to direct the Obstructionists, to pay to the Society monthly compensation calculated at the rate of Rs.1,49,984/- (Rupees One Lakh Forty Nine Thousand Nine Hundred and Eighty Four only) per month or at any other rate this Hon'ble Court may deem fit and proper for the period from 01 January 2014 to 31 November 2015 or such other date as this Hon'ble Court may deem fit and proper;

c) That pending the hearing and final disposal of this Civil Application and the Civil Revision Application, this Hon'ble Court be pleased to direct the Obstructionists, to pay to the Society compensation at the rate of Rs.1,49,984/- (Rupees One Lakh Forty Nine Thousand Nine Hundred and Eighty Four only) per month or at any other rate this Hon'ble Court may deem fit and proper from 01 December 2015 till the Obstructionists hands over quiet, vacant and peaceful possession of the entire Suit premises to the Applicant herein;”

2. It is not in dispute that in R.A.E.Suit No.538/994 of 2004 which is filed by the applicant before the Small Causes Court at Bombay against respondent Nos.4 and 5- the original tenants, came to be decreed in terms of a consent decree dated 30 August 2004. On 14 January 2005 when this decree was put to execution, the respondent nos. 1 to 3

obstructed the execution of the decree. Accordingly, in the execution proceedings, obstruction notice no.14 of 2005 came to be filed by the applicant against respondent nos.1 to 3. On 13 February 2012 the executing Court discharged the obstructionist notice. In an appeal which was filed against the applicant-society against the said order dated 13 February 2012, the appeal Bench of the Small Causes Court allowed the appeal by setting aside the order dated 13 February 2012 passed by the executing Court and directed respondent nos.1 to 3-petitioners to hand over possession of the suit flat to the applicant-society on or before 20 December 2013, failing which liberty was granted to the applicant-society to execute the decree against respondent nos.1 to 3. Against the said order, civil revision application has been filed by respondent nos.1 to 3 on which the above order dated 23 July 2014 came to be passed permitting the applicant to file an application for compensation as noted above. Learned Counsel for the applicant submits that the prayer for compensation is based on the valuation report as submitted by the Government registered valuers Kanti Karamsey & Co., a copy of which is placed on record at page 17 of this application. The flat in question is situated at 51, Bhulabhai Desai Road, (formerly Warden Road), Mumbai, which is measuring 1376 sq.ft. Learned Counsel for the applicant contends that as there are clear findings which are recorded by the appellate Court in the orders dated 20 September 2013 that respondent nos.1 to 3 are occupying the suit flat

without a semblance of right. It is submitted that in view of the consent decree dated 30 August 2004 the applicants are entitled to possession of the flat. However, in view of the obstruction proceedings and inspite of order dated 20 September 2013 in the obstruction proceedings which is decided in favour of the applicant-society, the applicant is deprived of the premises. It is further submitted that respondent nos.1 to 3 have failed to show any right whatsoever under any document to occupy the suit flat and still they continue to enjoy the suit flat. A reply affidavit has been filed on behalf of the respondent nos.1 to 3. A perusal of the reply clearly indicates that there is no contest to the valuation of the amount of compensation which has been demanded by the applicant considering the location of the flat in the South Bombay. In reply, irrelevant and unwarranted pleas are taken by respondent nos.1 to 3 questioning the authority of the applicant to demand compensation. However, admittedly, the original revision applicants/obstructionists are not even the members of the applicant-society nor do they have any document to show as to in what capacity they are in possession of the suit premises/flat. Admittedly, the respondent nos.1 to 3 have never asserted their rights if at all they have any, to contest and to seek declaration of their rights against the applicant or any other person.

3. Considering the above undisputed facts, it is clear that the prayers as made in the civil application are not unjustified and are in fact

required to be considered as reasonable. It cannot be accepted that respondent nos.1 to 3 enjoy the suit property without making payment of any compensation whatsoever to the applicant-decreeholder. In fact, prima facie, it appears that the respondent nos.1 to 3 had kept the applicant deprived of the consent decree which is passed on 30 August 2004. In this situation, the principle of law as laid down by the Supreme Court in the case of “*Atmaram Properties Private Limited vs. Federal Motors Private Limited*”¹, and “*State of Maharashtra &Anr. Vs. M/s. Super Max International Pvt. Ltd. &Ors.*”² are clearly applicable.

4. The application is, therefore, required to be allowed in terms of prayer clause (a) to (c) . It is accordingly, so, allowed. Respondent Nos.1 to 3 are directed to deposit the amount as directed within two months from today. If the amount so directed is not deposited, needless to observe that the impugned stay order which is operating shall stand vacated and the decree shall be proceeded to be executed in accordance with law.

(G.S. KULKARNI, J.)

1 (2005) 1 SCC 705

2 (2009) 9 SCC 772