IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.230 OF 2017
IN
COMMERCIAL SUIT NO.53 OF 2017

Kranvis Realty LLP ... Plaintiff/Applicant
Versus
Ashirwad Co-Op. Hsg. Soc. Ltd. And 3 Ors. … Defendants

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Mr. Shreepad Murthy, i/b. Abhishek Patil, for the Plaintiff.

Mr. Mehul Shah, for Defendant No.1.

Mr. Mukesh Vashi, Senior Advocate, a/w. Mr. Vasim Siddiqui, i/b. Kunal Bhanage, for Defendant Nos. 2 to 4.

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CORAM : S.C.GUPTE, J.

DATED : 7 JULY 2017

P.C.:

. Heard learned Counsel for the parties.

2. This Notice of Motion is taken out by the original Plaintiff in a suit seeking a decree of possession against Defendant Nos. 2 to 4 of their existing premises in a building, which is about to be redeveloped by the Plaintiff. The Co-operative Society of occupants is arraigned as Defendant No.1 to the suit. It is the case of the Plaintiff in the suit that the original building in the suit property known as Ashirwad Co-op. Housing Society is proposed to be redeveloped by the society of occupants – Defendant No.1. This proposal was mooted in the year 2007, since the existing building had become old and it was not feasible to repair the same. By a special general

body resolution passed on 15 December 2007, Defendant No.1 unanimously decided to go for redevelopment. Each of the tenement holders in the existing building has issued a consent letter in this behalf to Defendant No.1. After appointing legal advisers and project management consultants and following due process of law, Defendant No.1 identified the Plaintiff as the developer for the purpose of the proposed redevelopment. Pursuant to the negotiations between the parties, the parties entered into a redevelopment agreement. It is the case of the Plaintiff that, in pursuance of this redevelopment agreement, the Plaintiff has spent substantial amounts towards obtaining conveyance of the suit property in favour of Defendant No.1, as also preparation and approval of plans, including payment of deposits and fees towards loading of TDR. Pursuant to this redevelopment agreement, about 22 members of Defendant No.1 Society out of existing 25 members, agreed to accept new premises in the proposed building and were ready to vacate their respective premises. These members are ready to execute agreements for alternative accommodation in lieu of their existing accommodation. In fact, as confirmed by learned Counsel for Defendant No.1 Society, 16 of these members have already vacated their respective flats on the basis that the building is dilapidated and unsafe of habitation. Defendant Nos. 2, 3 and 4 are the only members, who are doggedly obstructing the redevelopment project by refusing to vacate their premises against the areas offered to them by the Plaintiff in accordance with the redevelopment agreement. The Plaintiff, in the premises, has filed the present suit and sought interim orders in respect of the premises occupied by Defendant Nos. 2, 3 and 4, so as to enable the Plaintiff to go ahead with the redevelopment project, which has long since been overdue.

3. The application is opposed by Defendant Nos. 2, 3 and 4 on various grounds. Learned Counsel for Defendant Nos. 2, 3 and 4 submits that contrary to the redevelopment agreement between the parties and original plans of construction disclosed by the Plaintiff, Defendant Nos. 2 and 3 are being offered premises of less area as well as less frontage in the amended plans. Learned Counsel submits that the originally proposed plans have been amended by the Plaintiff without notice or concurrence of Defendant Nos. 2 and 3. Learned Counsel further submits that the redevelopment agreement envisages certain compliances on the part of the Plaintiff before the members of Defendant No.1 Society could be asked to vacate their respective flats and construction could be commenced. Learned Counsel submits that these compliances *inter alia* require loading of TDR on the suit property and getting 2.7 FSI sanctioned from the Municipal Corporation of Greater Mumbai in the form of an IOD and also furnishing of a bank guarantee in terms of redevelopment agreement. Learned Counsel submits that these compliances have not been fulfilled by the Plaintiff as yet and the possession of the respective premises cannot, in the premises, be sought from his clients. Learned Counsel also submits that the redevelopment agreement provides for cancellation in the event of the developer failing to obtain IOD of 2.7 FSI within six months. Learned Counsel submits that since this IOD was not obtained by the Plaintiff, the redevelopment agreement has already stood terminated and, in the premises, his clients cannot be asked to vacate their respective tenements. As far as Defendant No.4 is concerned, learned Counsel submits that contrary to the agreement between the parties, Defendant No.4 is not being offered commercial premises on the ground floor of the

proposed building. Learned Counsel submits that, in the premises, Defendant No.4 is also entitled to resist any demand for delivery of possession of existing premises on the part of the Plaintiff for Defendant No.1.

4. After going through the respective pleadings of the parties and material before the Court, this Court is of the *prima facie* view that Defendant Nos. 2, 3 and 4 are obstructing the project of redevelopment on the basis of untenable contentions. Learned Counsel for the Plaintiff has offered, in the course of the hearing of the Notice of Motion before me, to allot two shops facing the road of an equivalent size to Defendant Nos. 2 and 3 and with almost equivalent frontage. Learned Counsel has explained that under the prevalent planning rules, his client is required to construct a toilet of a minimum 25 sq. ft. for the two tenements to be offered to Defendant Nos. 2 and 3. Learned Counsel submits that his client is prepared to construct a toilet for these two tenements outside the premises but within the new building proposed at site and even bear its cost. In the face of this offer, the basis of resistance offered by Defendant Nos. 2 and 3 boils down to this : Instead of premises being offered in the two corners as presently existing at site (separated by a stair case block), what is being offered in the new building proposed at site is two shops adjacent to each other and their frontage is being reduced by three inches, i.e. from 14 feet in the old plan to 9 inches in the existing sanctioned amended plan. As is apparent without much discussion, this basis for resisting the redevelopment is far from reasonable. As long as the Defendants are offered commercial premises of an equivalent area and facing the road and that too on the ground floor of the proposed building with an almost

equivalent frontage, they clearly have no cause to complain. If they still insist on obstructing the project, such insistence can only be termed as plainly unreasonable. Defendant No.1 Society, who is the only other party to the redevelopment agreement, has accepted the amended plans and given a go ahead to the Plaintiff to redevelop the suit building in accordance with the proposed amended plans. A large majority of members of Defendant No.1 society stand by the amended plans and have offered to vacate their respective premises, many of whom have even already vacated their respective premises. In the premises, the resistance offered by these two members on untenable footing, as noted above, does not deserve any countenance.

5. As far as the compliances in terms of clause 31 of the redevelopment agreement are concerned, learned Counsel for the Plaintiff assures the Court that the shops will be required to be vacated by the Defendants only after all compliances in terms of the redevelopment agreement are made. There is, therefore, no scope for any grievance on that score.

6. As far as the contention that the redevelopment agreement has already stood determined is concerned, the contention is merely required to be stated to be rejected. The relevant clause of the redevelopment agreement clearly permits the promisee, i.e. Defendant No.1 Society, to terminate the redevelopment agreement in case the IOD does not come within six months, as stipulated in the agreement. It is always open to the promisee to extend this time. As is apparent from the stands respectively adopted by the parties before this Court, Defendant No.1 has, in fact,

extended the time and allowed the Plaintiff to obtain IOD in extended period.

7. As far as Defendant No.4 is concerned, there is a letter on record (produced by Defendant No.4 himself as part of his affidavit-in-reply) that he would accept a multi-purpose premises of equivalent area on the second floor of the new building. It is quite apparent from his communication addressed to the Plaintiff in this behalf that he required the premises as office for practicing profession and that all he was concerned with was sanction of the Municipal Corporation for such user. Learned Counsel for the Plaintiff submits that his client stands by the offer to allot this multi-purpose premises to Defendant No.4 and even have the user sanctioned by the Municipal Corporation of Greater Mumbai. Learned Counsel for the Plaintiff further submits that he is in fact offering an additional area to Defendant No.4, since the planning requirements so mandate. (The planning rules mandate construction of a toilet as part of the premises constructed for multi-purpose user.) In the face of these facts, even Defendant No.4 has no case to resist the redevelopment project, purportedly on the footing that what is offered to him is multi-purpose premises on the second floor and not commercial premises on the ground floor. There is nothing in the re-development agreement between the parties or even in the original plan, which was approved by Defendant No.1 Society, to indicate that any commercial premises were being offered or required to be allotted to Defendant No.4 on the ground floor.

8. In the premises, the Notice of Motion is disposed of in terms of the following order :-

(A) Court Receiver, High Court, Bombay is appointed as a receiver of the existing units held by Defendant Nos. 2, 3 and 4 in the building known as Ashirwad Co-op. Housing Society described in paragraph 2 above with powers to take the following steps :-

(i) To communicate the consent of Defendant Nos. 2, 3 and 4 as occupants of existing premises to the Municipal Corporation of Greater Mumbai for sanction of the building plans;

(ii) To execute agreements for alternative accommodation in the new building proposed to be constructed at site in lieu of the existing units in the same form as other occupant members of Defendant No.1;

(iii) To obtain physical possession of the respective units described above as and when the Plaintiff complies with the requirements of the development agreement and the time is ripe for vacating the premises for the redevelopment work and hand over the premises to the Plaintiff/Defendant No.1;

(B) The Plaintiff shall offer rent as well as hardship compensation to Defendant Nos. 2, 3 and 4 in terms of the redevelopment agreement as an when the time for the same arises. In case the Defendants refuse or any of them refuses to accept such rent or compensation, the rent and compensation may be made over to the Court Receiver, who shall seek appropriate orders for payment/investment of the same from this Court;

(C) No order as to costs;

(D) On the application of learned Counsel for Defendant Nos. 2, 3 and 4, the operative part of this order is stayed for a period of four weeks from today.

(S.C.GUPTE, J.)