

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 625 OF 2016
WITH
NOTICE OF MOTION NO. 1844 OF 2016**

Kandivali Shiv Kripa Co-operative Housing
Society Ltd & Ors ...Plaintiffs
Versus
Maan Housing Development & Ors ...Defendants

Mr Sanjay Jain, *a/w Mr Tushar Goradia, Ms K Banatwala, i/b
Tushar Goradia, for the Plaintiffs.*
Mr Karl Tamboly, *i/b SR Sharma for Defendants Nos. 1 & 2.*
Dr Birendra Saraf, *a/w Mr Bhalchandra Palav, i/b Cyril Amarchand
Mangaldas for Defendants No. 4.*
Mr Pinakin Shah, *partner of Neminath Construction is present*
Mr Dhiraj Shah, *a/w Mr Ajay Rathod for Neminath Construction.*
Mr Kishor Shah, *partner of Neminath Construction is present*

CORAM: G.S. PATEL, J
DATED: 22nd March 2017

PC:-

1. The following order disposes of the suit and the Notice of Motion. It is in distinct parts. One part is in terms of the Minutes tendered; another part is an order on Consent Terms tendered; and

there is a third part that is *in invitum*. There are also some procedural matters.

PROCEDURAL MATTERS

2. A draft amendment is tendered, taken on record and marked “XI” for identification with today’s date. It seeks to add Defendants Nos. 19, 20 and 21. It is allowed without need of reverification and without need of fresh service. Amendments to be carried out on or before 31st March 2017.

3. A Vakalatnama on behalf of Defendant No. 20 is ready. It is to be filed in the Registry. Defendants Nos. 19 and 21 are present. Defendant No. 21 is represented by his Constituted Attorney, who has with him the necessary Power of Attorney.

4. Plaintiff No. 5 died during the pendency of the Suit. His legal heirs attended the extra ordinary general meeting of the 1st Plaintiff society held on 16th March 2017. They all signed the attendance sheet and consented to the decisions taken at that meeting. Leave is granted to delete Plaintiff No. 5 as a party to the Suit.

ORDER ON DRAFT MINUTES

5. Draft Minutes of the Order have been drawn by between the Plaintiffs, the 1st and 2nd Defendants, Defendants Nos. 3, 5, 6 and 20, Defendant No.4 and Neminath Constructions (added by the amendment). The Minutes of the Order are taken on record and

marked “X2” for identification with today’s date. On behalf of the 1st Plaintiff society, Mr Shravan Vyas, the Secretary and Mr Yatin Samani, Committee Member of the society have signed these Minutes. They are also signed by Mr Lakesh Malavia, Defendant No. 2, for himself and on behalf of Defendant No. 1 as its partner. Defendants Nos. 3, 5 and 20 have also signed. Defendant No. 6 is represented by his Constituted Attorney who has signed. Mr Pinakin Shah, a partner of Neminath Construction, who is personally present in Court, has also signed these terms. On behalf of Defendant No.4, the Bank of Baroda, an Authorised Officer who is present in Court has signed these terms.

6. The Minutes have two Annexures being Annexure “A” & “B”. These form part of the Minutes. There will be an order in terms of these Minutes. The undertakings in the Minutes are accepted as undertakings to the Court.

7. A scanned copy of the Minutes of the Order showing the signatures is to be provided and will be uploaded as the second order in the Suit.

CONSENT TERMS

8. Consent Terms are tendered. These are between the Plaintiff No.1, Defendants Nos. 1 to 3, Defendants Nos. 5 and 6 and Defendants Nos. 19 to 21. These are separately taken on record and marked “X3” for identification with today’s date. The Consent Terms have been arrived at after several rounds of negotiations and

some hearingS in Court before me. I am satisfied that these Consent Terms are in order, not contrary to law and have been drawn by the parties of their own volition in reflection of their understanding and true intentions. The Consent Terms are signed on behalf of the 1st Plaintiff, the 1st Defendant, the 2nd Defendant, the 3rd Defendant, the 5th Defendant, the 6th Defendant, 19th and 21st Defendants. There will be an order in accordance with the Consent Terms. The undertakings in the Consent Terms are accepted as undertakings to the Court.

9. Annexure 1 to these Consent Terms is a list of the claims or disputes that are being handled and are agreed to be handled and address by the 1st Defendant. Mr Jain for the Society confirms that other than these disputes there are no other claims or disputes between the 1st Plaintiff society or any of its other members with the 1st Defendant.

10. These Consent Terms will also be provided in a soft copy and will be separately uploaded as a third order in this Suit.

COURT ORDER *IN INVITUM*

11. Defendant No. 2 has filed an Affidavit on behalf of Defendant No.1 in relation to the 8th allottee who was the subject matter of the previous order. In regards to this allottee, one Kantilal D Mehta and one Nisha J Mehta, the 1st and the 2nd Defendants have stated that they have cancelled the allotment. Any claim from Kantilal Mehta and Nisha Mehta will be satisfied fully by Defendants Nos. 1 and 2

and neither the newly added Defendant No.19 nor the society will be liable to either Kantilal Mehta or Nisha Mehta in respect of that allotment in any manner whatsoever. The statement made in paragraph 7 of the Affidavit filed by the 2nd Defendant is also noted and accepted as an undertaking to the Court. This Affidavit will be filed separately in the Registry as an Affidavit in the Suit.

12. Dr Bakul Mehta had previously appeared before me. he had raised several disputes not only with the society and the earlier developer, Defendant No.1, but also made complaints to the MCGM. By my order dated 7th March 2017, I specifically noted his complaints and grievances and his acceptance and confirmation of and no objection to the solution that was then offered. In particular paragraphs 2, 3 and 4 of that order are relevant and by way of abundant caution are reproduced below as forming part of this order as well:

2. At 5:00 pm, Dr Mehta assures me that he is agreeable to the terms. Mr Jain for his part clarifies that all Dr Mehta's entitlements under the Development Agreement as the owner / allottee of the commercial premises (a clinic) will be made available exactly in terms of the Development Agreement, including as to rate of transit rent and corpus. The same terms and conditions as are applicable to all others will be applied to him too under the Development Agreement.

3. Dr Mehta understands that it is not possible to shift the present location of his clinic. However, the Plaintiffs have been able to negotiate with the owner/operator of a flour mill that is outside the building but very close to Dr Mehta's clinic. The owner/operator of the flour mill has

agreed at the instance of the Plaintiffs to close down permanently. This addresses Dr Mehta's most overriding concern of the nuisance and health issues posed by that flour mill.

4. Dr Mehta confirms that as regards the minor reduction of the frontage of his premises by six running inches, he has no objection to this, since the entire area that is being made available to him for his clinic is unchanged and remains at 255 sq.ft. carpet as per the agreement. This is the area that will be handed over and delivered to Dr Mehta.

13. As regards any other members, they have not come to Court or appeared before me. Their merely addressing letters to various authorities is inconsequential and of no avail. They will be bound by decisions taken by the majority of members of the society at a duly convened general meeting or extraordinary/special general meeting. They cannot and will not be heard to say thereafter that they have any independent grievances or that they are not bound by the decisions of the majority of the members at the general meeting. The MCGM is also therefore not required to insist on the specific consents of every single member. All members are not only bound by the provisions of the Maharashtra Co- Operative Societies Act, but they are also bound by the present order. The MCGM will not insist on written consent from 100% members of the society but will accept this order in satisfaction of all requirements as regards consent.

14. Subject to compliance with all other conditions and satisfaction of the objections raised in the Affidavit dated 4th July

2016 in Reply to the Notice of Motion, the MCGM will issue the commencement certificate and, if necessary, revalidate or extend the applicable IOD as expeditiously as possible from the date of reporting compliance with the conditions set out in that Affidavit.

15. While sanctioning the plans the MCGM is not to take into account for the purposes of any calculations the area of the 1st Plaintiff's plot that has been occupied by the local Police chowky. The MCGM will also not require as a precondition the removal of that Police chowky and will proceed irrespective of whether the Police chowky is there or not. Removal of the Police chowky is not a matter that is in the hands of private citizens. That is a matter between the MCGM and the Mumbai Police.

BANK OF BARODA

16. As this matter draws to a close, I believe I would be remiss in not making special mention of the conduct of one particular party. That is Defendant No.4, the Bank of Baroda. It had a substantial claim when the suit began. As the parties negotiated a settlement, working late hours almost daily — and the tension was indeed palpable — it soon emerged that the success or failure of any settlement hinged on an understanding with, and the cooperation of, the Bank of Baroda. I requested the Bank to consider the Plaintiffs' representations and proposals at the earliest possible stressing as I did so the plight of the tenants and occupants. I made this request with no real expectation of anything materializing for at least a couple of weeks. It was, therefore, immensely heartening to hear

from Dr Saraf and Mr Palav for the Bank of Baroda that its officers at the highest levels had not only considered these proposals positively but had done so in no more than four days, and those included two over a weekend. I must record my appreciation of the cooperation and efforts of the officers of the Bank of Baroda.

DISPOSAL OF SUIT

17. The suit as against the remaining Defendants is dismissed as withdrawn. Refund of Court Fees, if any, in accordance with the Rules. All interlocutory applications are disposed of as infructuous. This order supersedes all previous orders.

18. All parties to act on an authenticated copy of the order.

(G. S. PATEL, J.)