

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

**COURT RECEIVER'S REPORT NO. 227 OF 2017/D-GROUP
IN
SUIT NO. 1512 OF 2009**

**ALONGWITH
NOTICE OF MOTION (L) NO.2385 OF 2017
IN
COURT RECEIVER'S REPORT NO. 123 OF 2017
IN
SUIT NO. 1512 OF 2009**

Shapoorji Pallonji & Company Ltd.

..... Plaintiff

VERSUS

Jignesh Shah & Ors.

..... Defendants

Mr.Dwarkadas, Senior Advocate, a/w. Dr.Saraf, Mr.Nimay Dave, Mr.Dhaval Vussonji, Ms.Sonam Mhatre, Mr.Umang Mehta, i/b. Dhaval Vussonji & Associates for the Plaintiffs.

Mr.A.Y.Sakhare, Senior Advocate, a/w. Ms.Preeti Purandare, Mr.R.Y.Sirsikar for the MCGM, Defendant no.6.

Mr.Pradeep Sancheti, Senior Advocate, a/w.Ms.Minal Chandnani, i/b. J.S.Chandnani for the Defendant nos. 1 to 5.

Mr.Sachin Baban Beldar, Assistant Engineer (Imp.)-I.

Mr.Niranjan Gunduka, HC-(Soc.)

Ms.Geeta Shastri, A.G.P. For the Respondent – RERA.

Ms.K.Y.Ambekar, 1st Assistant to Court Receiver present.

CORAM : R.D.DHANUKA, J.

DATE : 30th NOVEMBER, 2017

P.C.

Notice of Motion (L) No.2385 of 2017 not on board. By consent of parties, taken on Board.

2. By this Court Receiver's Report, the Court Receiver seeks direction about the steps to be taken by the Court Receiver in respect of the payment of cost of repair works for two buildings viz. 40 and 48 tenement building to the defendant no.6 i.e. the Municipal Corporation of Greater Mumbai and also to pay the cost of Rs.3,000/-.

3. The applicants (original defendant nos. 1 to 5) have filed notice of motion *inter alia* praying for quashing and setting aside the letter dated 19th July, 2017 issued by the Municipal Corporation to the Court Receiver pertaining to the NOC to OC for proposed sale building in redevelopment scheme described in prayer clause (a) of the notice of motion and for other reliefs.

4. Mr.Dwarkadas, learned senior counsel for the plaintiff invited my attention to the order dated 21st July, 2017 passed by Shri S.C.Gupte, J. in Court Receiver's Report No.123 of 2017 and in particular paragraphs 9(IV) and (V) and would submit that the requisite amount towards payment of various dues to the Municipal Corporation has been already deposited by the plaintiff with the Court Receiver's Office and out of the said amount, the amount of Rs.3,18,24,802/- shall be directed to be released to the Municipal Corporation by the Court Receiver and in turn, the Municipal Corporation shall be directed to issue occupation

certificate to the plaintiffs in compliance with the order passed by Shri S.C.Gupte, J. He submits that the order passed by Shri S.C.Gupte, J. has not been stayed by the Division Bench of this Court though both the parties have impugned the said order.

5. Mr.Sancheti, learned senior counsel for the defendant nos.1 to 5 on the other hand submits that the demand raised by the Municipal Corporation in respect of various amounts and amount of Rs.3,18,24,802/- is seriously disputed by his client and thus if the said amount is allowed to be released to the Municipal Corporation and if the said amount is allowed to be recovered by the plaintiffs from the sale proceeds of the flats in the buildings in question, the rights of his clients would be seriously prejudiced. In support of his submission, learned senior counsel invited my attention to some of the correspondence annexed to the affidavit in reply of the notice of motion.

6. Mr.Sakhare, learned senior counsel for the Municipal Corporation also placed reliance on paragraphs 9(IV) and 9(V) of the order passed by Shri S.C.Gupte, J. on 21st July, 2017 and would submit that insofar as the dues payable to the Municipal Corporation by the defendant nos. 1 to 5 are concerned, the said dues are crystallized in the said order dated 21st July, 2017. He submits that on the date of the said order, the Municipal Corporation was entitled to recover an amount of Rs.2,75,00,000/- towards repair of two buildings in question. After the said order came to be passed, defendant nos. 1 to 5 were liable to pay further amounts before any occupation certificate can be granted by the

Municipal Corporation in respect of those two buildings. He submits that unless the said amount of Rs.3,18,24,802/- is cleared as a condition precedent to the Municipal Corporation, no occupation certificate can be issued by the Municipal Corporation.

7. It is not in dispute that the order dated 21st July, 2017 passed by Shri S.C.Gupte, J. in Court Receiver's Report No.123 of 2017 is not stayed by the Division Bench of this Court in the appeal filed by the plaintiff or by the defendant nos. 1 to 5.

8. A perusal of the said order clearly indicates that in paragraph 9(IV) of the said order passed by this Court, certain liabilities to the Municipal Corporation were identified in the statement annexed as 'X' to the said report on 21st July, 2017 in the said sum of Rs.5,98,22,857/- which included the cost of repairs of two buildings in the sum of Rs.2,75,00,000/-. The plaintiff had confirmed that all such amounts were due and payable as demanded by the Municipal Corporation. In the said order, it was made clear that the plaintiff would be entitled to be reimbursed of those payments upfront from out of the sale proceeds held by the Court Receiver in the designated account. As and when such payments are made, the concerned demand of the Corporation and proof of payment towards such demand shall be furnished by the plaintiff to the defendant nos. 1 to 5 through their advocates. It was made clear that as and when the plaintiff funds the Court Receiver for disbursement of those payments, which are reflected in the schedule marked as 'X', the Court Receiver shall immediately make such payments to the authorities concerned.

9. The said amount of Rs.2,75,00,000/- is now enhanced to Rs.3,18,24,802/- as due and payable as per Municipal Corporation. It is not in dispute that the plaintiff has already complied with its obligation under the said order dated 21st July, 2017 and has deposited the requisite amount with the Office of the Court Receiver. In view of the fact that the said order is not stayed, the right of the plaintiff to seek reimburse of those payments upfront from out of the sale proceeds held by the Court Receiver cannot be disputed.

10. I am not inclined to accept the submission of Mr.Sancheti, learned counsel for the defendant nos. 1 to 5 that the Court Receiver cannot be directed to release any amount to the Municipal Corporation until the actual liability of defendant nos. 1 to 5 towards dues of the Municipal Corporation is adjudicated upon in any independent proceedings.

11. Since the plaintiff has already complied with the said order passed by this court by depositing requisite amount and since the claim of the Municipal Corporation is also crystallized, the said amount will have to be released from the funds deposited by the plaintiff with the Court Receiver.

12. The Court Receiver is accordingly directed to release the amount of Rs.3,18,24,802/- to the Municipal Corporation within two weeks from today without fail. Upon receipt of such amount, the Municipal Corporation shall issue requisite certificate of no dues insofar as the

Estate Department is concerned. The plaintiff shall forward a copy of such certificate to the defendant nos. 1 to 5.

13. Court Receiver's Report is accordingly made absolute in the aforesaid terms. Notice of Motion is also disposed of in the aforesaid terms.

14. The plaintiff is directed to pay the cost of Rs.3,000/- to the Court Receiver for this report.

15. Parties as well as the Court Receiver to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)