

In the High Court of Judicature at Madras

Dated: 04.12.2017

Coram

The Honourable **Dr.JUSTICE ANITA SUMANTH**

Cont.P.No.2480 of 2014

and

A.No.2692 of 2015

D.Samuel Surendran

..... Petitioner

vs.

1. Mr.P.Badrinath

S/o Late P.Venkatesan Chetty
Partner, M/s.Vasavi Builders,
No.8A, Kandasamy Street,
Raja Annamalaipuram,
Chennai - 600 028.

2. M/s.Vijaya Bank,

Corporate Banking Br-II,
having office at No.123, Dugar Towers,
R.L.Road, Egmore, Chennai - 600 008.

(R2 impleaded vide order dated 11.10.2017
in Sub Appln. (OS) No.350 of 2017 in
Cont.P.2480/2014).

सत्यमेव जयते

..... Respondents

PETITION filed under Section 11 of the Contempt of Courts Act, 1971 to punish the respondent/contemnor for his contumacious act of wilfully disobeying the orders of this Court dated 10.01.2014 in O.A.No.861 of 2013.

For Petitioner : Mr.Krishna Ravindran

For Respondents : Mr.Vijayaraghavan - R1

Mr.P.Ramakrishnan - R2

ORDER

This order disposes of A.No.2692 of 2015 and Cont.P.No.2480 of 2013. The application is filed for the grant of extension of 15 months to complete the construction as per the time lines stipulated in the order dated 27.11.2013. The Contempt Petition is filed alleging wilful disobedience of the order of this Court dated 10.01.2014 passed in O.A.No.861 of 2013. The respondent in the application is the petitioner in the petition for contempt. The parties are referred to as per their status in the Contempt Petition.

2. This matter has a chequered history. A slew of petitions were filed by the petitioner in 2013 to seek interim relief from this Court in respect of the disputes arising from a Joint Venture Agreement for development of land at Semmenjeri village, Tambaram. The aforesaid agreement was terminated and a fresh Agreement entered into on 01.08.2008 whereunder, the parties agreed that 30 apartments would be constructed by the respondent for the petitioner and 28 for itself. Admittedly, there has been gross delay in the execution and completion of the project. An order thus came to be passed on 27.11.2013 by a learned Single Judge of this Court to the following effect.

'That the respondent/builder herein, shall proceed with the construction in the property morefully set out in the schedule - C hereunder,

and complete the construction in all respects, within a period of 12 to 15 months from this day.

2. That the applicant/owner herein, shall appoint a consultant, who shall monitor the progress of construction and give notices on any deficiency or default to the respondent/builder herein.

3. That upon receipt of such notices of default of deficiency, by the consultant appointed by the owner herein, the builder herein, shall rectify the same and inform the consultant and the owner herein, in writing, under acknowledgment.

4. That the Builder/respondent herein, shall hand over the copies of the approved plan and the structural drawings of the said property, to the owner/applicant herein, to enable him to hire the services of a consultant.

5. 'That since there are 28 flats allotted to the builder/respondent herein and 30 flats allotted to the owner/applicant herein, the builder shall hand over one flat to the owner, at the time of handing over one flat to a purchaser, in the property morefully set out in the schedule "D" hereunder, and in other words, if the builder wants to hand over possession of one completed flat to a buyer, he must hand over one flat, fully completed of construction, to the owner also. If one flat each is not handed over, then the builder shall not be entitled to hand over the possession of second flat to the purchaser from the said D schedule property.'

6. That the owner herein, be and is hereby permitted to obtain a quotation from the consultant and place it before the Court.

7. That in the meantime, the builder herein, be and is hereby directed to commence construction in schedule C property also.

8. That the builder herein, shall ensure that the construction is as per the specification prescribed in the agreement.

9. That the A.No.5202 of 2013 be posted 09.12.2013.'

3. The above application was closed on 10.1.2014 directing the parties to adhere to the directions issued in the order dated 27.11.2013.

4. There has been, according to the petitioner, no progress whatsoever to adhere to the time schedule set out by this Court as above. Accordingly, a notice for contempt was issued to the respondent on 08.07.2014.

5. A petition for contempt came to be filed in December 2015 for non-compliance of the order of this Court dated 27.11.2013. A counter has been filed disputing all the allegations made. On 30.10.2015 an order came to be passed by this Court where under the rights of the petitioner were secured by attaching four properties belonging to the respondent. This court ordered as follows:

'All the time given to the Builder to complete the construction has gone. Both parties have placed themselves in such a predicament that today it is

not possible for both of them to get out of the contractual tie. Therefore, the Builder is granted further time. But, the four flats that the Builder has allotted to and in favour of one S.Kalyani, wife of Harigopal, shall stand charged to the claim of the land owner D.Samuel Surendran. The charge created on these four flats, the undivided shares of which have already been registered in favour of S.Kalyani (sister-in-law of one of the partners) shall also be entered in the Encumbrance Certificate. The parties shall independently file progress reports before this Court once in a month.

Post in the 1st week of February 2016.'

6. Even the above order appears to have been violated and the property described in the order has been, according to the petitioner, alienated by the respondent. On 25.4.2016, a flat in another project of this respondents' at Perungudi was brought under attachment to secure the interest of the petitioner hereunder. Though this order was passed in the presence of the respondent, the flat was, according to the petitioner, clandestinely and hurriedly sold by the respondent to his grand son and the sale registered. A complaint has been filed by the petitioner to The Inspector General of Registration, Chennai seeking a cancellation of the registration and a Writ Petition in W.P.No.26682 of 2016 was also filed for cancellation of the document.

7. Thereafter, the matter has been listed for hearing on

several occasions. The respondent was directed to be present in Court for non-compliance of the orders of this Court and on account of his default, a bailable warrant was issued on 27.06.2017 for his arrest, pursuant to which he appeared on a few occasions. By order dated 10.07.2017, his appearance was directed to continue until discharged by the Court. In spite of the said order, there was default in appearance, on account of which non-bailable warrant was issued on 31.10.2017. Promptly the respondent appeared, but defaulted again, on account of his hospitalisation, as stated by his counsel. On his behalf, Mr. Krishnaprasad, son of Mr. Badrinath was present and was directed to appear for all further hearings. Thereafter, there have been continuous requests for further time to complete the construction. I am of the opinion that sufficient time and indulgence has been granted by the Court to enable the respondent to complete the project. Based on the photographs circulated by the petitioner, the super structure appears more or less at the same stage as what it did in 2013 with marginal progress in the construction. There is thus no visible progress and the petitioner appears to have reached the end of his tether.

8. I am also not convinced that the efforts, if any, made by the respondent in this direction are bona fide. In the course of hearing, both parties had submitted that a loan had been sought from Vijaya Bank by the respondent expressly for the

completion of the present project and a sanction obtained. A bank statement for the period 01.09.2017 to 21.09.2017 of M/s.Vasavi Housing Infrastructure in Vijaya Bank was filed indicating a credit balance of Rs.84.00 lakhs. An order freezing the balance was passed on 11.10.2015. However, the bank statement filed on 26.10.2017 revealed that the entire amount credited, Rs.70.00 lakhs on 21.09.2017 from Repco Bank and Rs.67,87,500/- from Karur Vysya Bank and Rs.22.00 lakhs from Repco bank on 25.09.2017 had been withdrawn/utilized by the respondent and deployed elsewhere leaving a balance of a paltry amount of Rs.5070.70. The Bank was thus impleaded as a party and Mr.Ramakrishnan, learned counsel, was heard on its behalf. This conduct of the respondent on this one aspect of the matter leads me to the inevitable conclusion that the respondent is not well intentioned and is merely buying time from this Court.

9. Be that as it may and taking the aforesaid facts into account, I believe that the petitioner has suffered enough. The plea of the petitioner, that he be permitted to complete the construction on his own and with his own efforts appears acceptable. Let the petitioner identify an appropriate contractor and proceed with the construction.

10. As far as the disputes inter se the parties are concerned a provision for alternate dispute resolution is set out in Joint Development Agreement dated 04.08.2007 under

Article 24.

11.Mr.Krishna Ravindran appearing for the petitioner and Mr.Vijaya Raghavan, learned counsel appearing for the respondent, upon instructions from Mr.Krishnaprasad, who is present in Court, agree and concur that the disputes between the parties may be referred to arbitration by Mr.Justice G.M.Akbar Ali, former Judge of this Court.

12. Upon the consent expressed by the parties and their joint suggestion, Mr.Justice G.M.Akbar Ali is requested to adjudicate upon the disputes that have arisen between the parties. The learned Arbitrator may, after issuing notice to the parties and upon hearing them, endeavour to pass an award as expeditiously as possible, preferably within a period of four months from the date of the first sitting seeing as the matter has been hanging fire since 2014. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses that shall be borne by the parties equally.

13.As far as deployment of the amounts received from Repco Bank Ltd. and Karur Vysya Bank Ltd. is concerned, learned counsel for the respondent would maintain that the amount has been deployed only in the construction of the petitioners' portion of the project and a sum of Rs.22,00,000/- spent for

purchase of steel. Let the steel be delivered to the petitioner for use by it in the construction of the petitioners' portion of the project. Credit may be taken for the same in the final reconciliation of accounts after a proper verification is effected to the satisfaction of the learned Arbitrator. The contempt petition and the connected application are closed in the above terms. No costs.

msv/sl SD/-
ASSISTANT REGISTRAR (COM.CASES)

//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER (O.S.)

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KR/CO/19/01/2018

one cc to the Mr.Krishna Ravindran, Advocate, SR.No.14795/2017.

one cc to the Mr.Vijayaraghavan, Advocate, SR.No.14505/2017.

one cc to the Mr.Krishna Ravindran, Advocate, SR.No.7054/2017.