

NSC.

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***CIVIL WRIT PETITION NO.8990 OF 2018
WITH
CIVIL APPLICATION NO.1230 OF 2018
IN
CIVIL WRIT PETITION NO.8990 OF 2018***

Madhuben D. Vyas

...Petitioner

Versus

Shree Vijay C-D Wing Co-op. Hsg. Soc. Ltd. and Ors. ...Respondents

Mr.Deep Morabia i/b Mr.Zaid Ansari, for the Petitioner.

Ms.U.R.Tiwari, for the Respondent No.1.

Mr.S.H.Kankal, A.G.P for the Respondent No.3.

CORAM : REVATI MOHITE DERE, J.

DATE : 6th SEPTEMBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. Learned Counsel for the Petitioner has tendered an undertaking dated 6th September, 2018, of Mr.Kumar Vyas, Constituted Attorney of the Petitioner. The same is taken on record and marked 'X' for identification.

3. Learned Counsel for the Respondent No.1 has no objection to the undertaking given by Mr.Kumar Vyas, Constituted Attorney of the Petitioner and the contents in the said undertaking.

4. By the said undertaking, under Clause - 3, the Petitioner has undertaken to pay a sum of Rs.4,04,329.47 within six months from today. The details of which have been set out in clause – 3 (b) to clause – 3(g) of the undertaking.

5. In clause – 4, it is stated that in the event of any interest accrued on the amount specified in clause – 3(a) of the undertaking, the Respondent No.1 shall give credit of the same to the Petitioner and the last installment to be paid by the Petitioner to the Respondent No.1 in terms of clause – 3(g), shall stand modified. It is also stated that in case no interest is accrued on the aforesaid installment as mentioned in clause – 3(a), the last installment shall be the same as mentioned in clause – 3(g) of the undertaking.

6. Under clause – 5 of the said undertaking, it is mentioned that in case there is default in complying with clause – 3 (b) to clause – 3(g) of the undertaking, the Respondent No.2 i.e. the Special Recovery Officer shall proceed with the execution of the Recovery Certificate, which is at Exhibit – B to the aforesaid Petition.

7. The Respondent No.1 has provided the Statement of Outstanding Dues to the Petitioner, which is annexed as Exhibit – 'A' to this undertaking.

8. In clause – 7, the Petitioner and the Respondent No.1 have within a period of one week, agreed to submit the Statement of outstanding dues, which is annexed as Exhibit – 'A' to the undertaking, to the Respondent No.3, with a request to appoint an Auditor to audit the said Statement of outstanding dues and check the calculation and the interest done thereon. The Auditor so appointed within one month from the date of receipt of Exhibit – 'A' to the undertaking, is to provide to the Petitioner and the Respondent No.1, the audited Statement of outstanding dues for the period from 1st January, 2006 to 30th September, 2018.

9. Under clause – 8, it is stated that the fees of the Auditor, if any, for auditing the Statement of outstanding dues is to be borne by the Petitioner.

10. Under clause - 9, both the parties i.e. the Petitioner and the Respondent No.1 have agreed not to raise any objection to the audited Statement of outstanding dues for the period from 1st January, 2006 to 30th September, 2018, provided by the Auditor so appointed.

11. Under clause – 10, the Petitioner shall within the period of three months from the date of communication of the audited Statement of outstanding dues, clear the outstanding dues for the period from 1st January, 2006 to 30th September, 2018, by paying the same on an equal/pro-rata monthly basis to the Respondent No.1

12. Under clause – 11, if any, application is filed by the Petitioner for transfer or NOC or any other application in respect of the Petitioner's Flat No.D/13, the Respondent No.1 to decide the same, as per the Societies Bye-laws and provisions of law.

13. Under Clause – 12, the Petitioner has undertaken that henceforth, he shall make payments regularly to the Respondent No.1, without any default of all maintenance charges, etc., as per the maintenance bills submitted by the Respondent No.1.

14. Both, the Constituted Attorney of the Petitioner as well as the Chairman of the Respondent No.1-Society, have signed the undertaking as well as the Annexure 'A' to the said undertaking.

15. Learned Counsel for the Respondent No.1 has also agreed to what is set out by the Petitioner, in the undertaking. The Respondent no.1 has also signed the said document.

16. Parties to abide by their respective commitments.

17. In view of the undertaking given by the Constituted Attorney of the Petitioner, the Respondent No.2 i.e. the Special Recovery Officer, shall not take any steps in furtherance of the Recovery Certificate issued

by him, unless there is default of payment of any of the installments as mentioned in clause – 3 (b) to clause – 3(g), of the undertaking.

18. The Respondent No.1 is permitted to withdraw Rs.50,000/- deposited in this Court pursuant to the order dated 3rd February, 2017, passed in this Petition, along with interest accrued thereon, if any, on furnishing proof of identity.

19. In view of the undertaking filed by the Constituted Attorney of the Petitioner, Petition is disposed of on the aforesaid terms.

20. In view of the aforesaid, Civil Application No.1230 of 2018 does not survive and the same is also disposed of.

21. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)