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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 483 OF 2017

Kiran Suresh Bhagiya	]	
age: adult, Occupation : Business	]	Petitioner.
r/at A-30, Abhimanshree Society, Pashan	]	Original
Pune 411 008	]	Plaintiff

V/s.

1. M/s Kakade Construction Co.Pvt. Ltd	]	
Plot No.67-68, Sanmitra Bungalow	]	
Opp. Telephone Exchange, Abhinav Lane	]	
Erandwane, Pune – 411 004	]	
	]	
2. Suryakant Kakade & Associates	]	Respondents
Through its Proprietor (Director)	]	Original
Suryakant Dattatraya Kakade	]	defendants.
r/o Plot No.67-68, Sanmitra Bungalow	]	
Opp. Telephone Exchange, Abhinav Lane	]	
Erandwane, Pune – 411 004	]	

Mr. Shivam Nagalia i/by Triyama Legal, for the Petitioner.
Mr. Purushottam G. Chavan, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 9th JANUARY, 2018.

ORAL JUDGMENT :

1] Heard learned counsel for the petitioner and respondents.

2] Rule.

3] Rule made returnable forthwith with the consent of the both the learned counsels.

4] By this Revision Petition, filed under Section 115 of Code of Civil Procedure, the petitioner is challenging the order dated 12th April, 2017, passed by the Joint Civil Judge Senior Division, Pune, in Regular Civil Suit No.434 of 2016, below Application Exh.42, thereby holding that the valuation of the suit made by the petitioner-plaintiff is not proper and the suit claim should have been valued as per Section 6(iv) (d) of the Bombay Court Fee Act.

5] The said application was filed by the respondents under Section 9-A of Code of Civil Procedure, contending inter-alia that the suit property is commercial premises and the plaintiff is seeking relief of declaration of exclusive ownership and also the possession over the suit property, therefore, he should have valued the suit on the market value of the suit property and the requisite court fee as per Section 6(iv) (d) the Bombay Court Fees Act, is required to be paid.

6] Though the present petitioner brought to the notice of the trial Court that the suit was filed under Sections 3 and 4 of the

Maharashtra Ownerships of Flats Act, 1963 (for short called as, "MOFA Act") for specific performance of agreement dated 20th November, 2006, and accordingly affixed Court fee as required under Section 6(4) (j) of the Bombay Court Fees Act, the trial Court, rejected the said contention and held that as the suit claim is for declaration of exclusive ownership and possession of the suit flat, the valuation has to be made on the market price of the said flat. The trial Court, accordingly, also called for the report from Nazir about the valuation, which is reported as Rs.30 lacs and hence directed the petitioner to pay court fee stamp accordingly. It was further directed that if pecuniary jurisdiction of the Court exceeds, appropriate order will be passed.

7] While challenging this impugned order of the trial Court, submission of learned counsel for the petitioner is that when the suit is filed specifically for performance of the statutory obligation under the MOFA Act, then the suit has to be valued in view of the provisions of section 6(4) (j) of the Bombay Court Fees Act on notional valuation, as held by this Court, in case of ***Vrindavan (Borivali) Co-operative Housing Society Ltd -vs- Karmarkar Brothers and ors 1983 (2) Bom CR 267,*** and ***Maria Philomina Pareira -vs- M/s Rodrigues Construction a Partnership Firm, AIR 1991 Bom. 27.***

8] Per contra, learned counsel for respondents has drawn attention of this Court to section 11 of the MOFA Act and has submitted that the suit is not for the performance of the statutory obligation on the part of the respondents, but for the declaration of exclusive ownership and possession over the suit flat and hence, the trial Court has, after having regard to the relevant prayer clauses, rightly held that the suit should have been valued on the market consideration of the suit flat.

9] Learned counsel for respondents also points out that petitioner has already mortgaged the said flat to Jalgaon Peoples Co-operative Bank Ltd and availed loan of some lacs of rupees which is against the terms and conditions of the agreement. The petitioner has also not paid the entire consideration amount of the agreement. As a result, respondent was even constrained to terminate the agreement and that is the reason why petitioner is not seeking the specific performance of the agreement or for performance of the obligation arising under the provisions of MOFA Act, but relief of declaration of his exclusive ownership and possession and seeking possession of the suit flat. According to learned counsel for respondent, therefore, the trial Court has rightly considered the prayers in the suit and directed the petitioner to pay the Court fee on the market value as per provisions under Section 6(iv)(d) of the Maharashtra Court Fees Act.

10] In order to appreciate the rival submissions, advanced by learned counsel for both the parties, it would be necessary to peruse the plaint, which clearly bears the title that "*the suit is for permanent injunction, declaration and possession under Sections 3 and 4 of the MOFA Act".* The averments made in paragraph No.2 of the plaint also reveal that the petitioner is relying on the agreement to sale dated 20th November, 2006 executed by respondent in his favour for getting the relief of declaration. The perusal of the said agreement reveals that it is executed under the provisions of MOFA Act. Clause (R) of the said agreement reads as follows:-

> "Since the present agreement would be governed by the provisions of Maharashtra Ownership Flats Act, 1963, provisions of Section 4 of the said Act imposed obligation upon the party of the first party to enter into agreement for sale of tenements in writing and also imposed obligation to register the said agreements. Accordingly, the parties to the First Part and the Party of the Second Part have agreed to reduce the terms agreed between them into writing and present the same for registration".
>
> (emphasis supplied)

11] Further clause No.12 of the agreement also lays down as follows :-

> "12. The Party of the Second Part alongwith other purchaser of Shop/Office in the building shall join in formatting to be known by such name for the Society/ a limited Company / Association to be known by such name for this purpose also from time to time sign and execute the application for registration and /or membership and other papers and documents for the formation and the registration of the Society / Limited Company / Association and for becoming a member including the bylaws of the proposed society and duly fill in, sign and return to the Party of the First Part within 15 days of the same being forwarded by the Party of the First Part to the Second Part, so as to enable the Party of the First Part to register the organization of the Party of the Second Part under Section 10 of the said Act within the time limit prescribed by <u>rule 8 of the Maharashtra Ownership of Flats Act. (Regulation of the Promotion, construction, Sale Management and Transfer) Rules, 1964. No objection shal</u>l be taken by the Party of the Second Part if any changes or modification are made in the draft bye-laws or the Memorandum and/Articles of Association, as may be required for Registration of Co-operative Societies or the Registration of Companies, as the case may be, or any other Competent Authority." (emphasis supplied)

12] Thus, both these clauses of the agreement dated 20.11.2006, the specific performance of which is sought by the plaintiff, in the suit, make it clear that by this suit, the petitioner is seeking performance of the statutory obligation arising out of the agreement executed under Sections 3 and 4 of the MOFA Act. Even assuming that prayer clause in the plaint is not drafted in the proper way, as contended by learned counsel for respondent, the reading of the plaint in its entirety leave no room for doubt that the suit is filed for enforcement of statutory obligation on the part of the respondent. The law is well settled that for deciding the correct valuation of the suit claim,this Court has to consider the real and effective relief, which the petitioner is claiming in the suit and said relief leaves no manner of doubt that the relief, which the petitioner is claiming, is of the spefific performance of the obligation arising under Section 3 and 4 of the MOFA Act.

13] This Court, has in the case of ***Vrindavan (Borivali) Co-opertive Housing Society Ltd -vs- Karmarkar Brothers and ors,*** **(supra)**, considered this very aspect and held that such suit is not a suit simpliciter for specific performance, but it is a suit to enforce the compliance with a statute.

14] In paragraph No.20 of the judgment it was further held that, “when the suit is filed seeking to enforce the statutory obligations which are arising under the MOFA Act, such a relief being incapable of monetary valuation, the valuation made by plaintiff in the said case relying on clause No.6(iv)(j) of the Court Fees Act is correct".

15] In paragraph No.21 of the judgment it was further held that "the intention of the Legislature in enacting the Maharashtra Ownership Flats Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 was not to impose any such burden on the respective parties governed by the provisions of said Act, if they are involved in litigation because of non-compliance with the provisions of Act".

16] Paragraph NO. 22 of the Judgment makes position further clear and it reads as follows:-

> "22. The subject-matter of the suit being of right to compel the performance of statutory obligation and the plaintiff who is asking assistance of the Court to compel the promoter to perform his statutory obligation, such a right to compel to perform the obligations provided by the statute being incapable of monetary valuation and there being no provision in the Court Fees Act for such a suit, the provisions of section 6(j) of the Court Fees Act are attracted and they are applicable to this suit. As the Court Fees were paid relying on the provisions, the valuation of this suit is quite proper and the plaint will have to be accepted and the suit will have to be proceeded with as the

valuation of the plaint is proper. ... ...”

17] This legal position was once again considered by this Court and confirmed in the judgment of ***Maria Philomina Pareira -vs- M/s Rodrigues Constructions (supra).*** In paragraph No.6 of the judgment, it was held that

> “when the agreement of sale was registered under the provisions of MOFA Act, and plaintiff wants the defendant to comply with the terms and conditions of the said agreement and in compliance thereto, when the suit is filed to enforce such obligation arising out of the agreement as such, such a suit would not fall within the scope of section 6 (xi) of the Bombay Court Fees Act. It is a statutory obligation, which is being enforced and a notional valuation under Section 6(iv) (j) of the Court Fees Act, would be proper”

It was further held that,

> “in all such agreements, if they are enforced by the flat purchasers individually, there can be no conveyance in favour of the flat purchasers individually, as ultimately conveyance has to be in favour of the society of all flat purchasers. If the promoter does not comply with the obligations under the Act, there are serious consequences to follow. Therefore, it must necessarily be held that whenever a builder enters into an agreement with any flat purchaser, containing provisions which are to be incorporated as provided under the said Act, all such agreements must necessarily be held to be special agreements, which can be enforced by filing suits, where the valuation would be a notional valuation under Section 6(iv) (j) of the Bombay

Court Fees Act, 1959".

18] In the present case, as stated above, the specific performance of the agreement, which the petitioner is claiming, is executed under the provisions of Sections 3 and 4 of the MOFA Act . Thus, by this suit, the petitioner is seeking the compliance of the obligation cast upon the respondent under the said Act. Therefore, it being a suit for compliance of statutory obligation, the valuation made by the petitioner on notional valuation under Section 6(iv) (j) of the Bombay Court Fees Act, is required to be held as just.

19] As regards the grievance of the respondent that the petitioner has availed some loan amount from the bank and has not paid the entire consideration under the agreement, therefore, his agreement is terminated, all those contentions pertain to the merits of the suit claim. They have got nothing to do with the valuation of the suit claim and in valuation clause in paragraph No.22 of the plaint, petitioner has categorically stated how he has paid the Court Fee stamp on notional valuation.

20] In the light of legal position discussed above, the said valuation being proper and correct, the impugned order passed by the trial Court directing the petitioner to pay Court fee stamp on the market value of the suit flat, is required to be quashed and set aside.

21] As a result, the Revision Application is allowed. The impugned order passed by the trial Court below Exh.42 is quashed and set aside.

[DR.SHALINI PHANSALKAR-JOSHI, J.]