

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application NO. 553 OF 2018
IN
Civil Revision Application NO. 405 OF 2018

Shri Surendra Ratansi Savla	...Applicant
<i>Versus</i>	
Mrs. Usha Sureshchandra Bhatt	
And others	...Respondents

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Ms. Manasi Pandit i/b. Jitendra Damani, for the Applicant.
Mr. P.K. Dhakephalkar, Senior Advocate i/b. Jaydeep Deo, Advocate for Respondents No.1 to 9.

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CORAM : R. G. KETKAR, J.

DATE : 21st DECEMBER, 2018

P.C.

1. Heard Ms. Manasi Pandit, learned Counsel for the applicant and Mr.P.K. Dhakephalkar, learned Senior Counsel for respondents No.1 to 9, at length.

2. By this application, the applicant has prayed for reviewing the order dated 9.8.2018 passed by this Court in C.R.A. No.405/2018 and C.R.A. No.363/2018 to the extent of parties having arrived at consensus in filing respective undertakings and for deciding C.R.A.s on merits. The applicant has also prayed for direction against the landlord to provide the premises admeasuring 609.27 sq. ft. (carpet) to the

applicant in 'A' wing and to file the undertaking according to the provisions of law.

3. The learned counsel for the applicant seeks time on the ground that the arguing counsel is busy in other Court. She submitted that in case the Court is not inclined to accede to the request as the matter is kept under the caption of 'dismissal', this order may be stayed for a period of eight weeks from today.

4. On the other hand, Mr. Dhakephalkar opposes the application for adjournment. He submitted that C.R.A. was heard from time to time. It was heard at length on 7.8.2018 and was kept for passing orders on 9.8.2018. On 9.8.2018, again the parties were heard at length. In paragraph-4, statement of Mr. Dani on instructions of Mr. Suketu Trivedi, the Partner of plaintiff No.4 M/s. Fortune Constructions, that the plaintiffs are ready and willing to allot flat admeasuring 609.27 sq. ft. carpet area in "A" Wing either on 4th, 5th or 6th floor to the defendant on tenancy basis, subject to obtaining Occupation Certificate from the Corporation, was recorded. Further the statement that the plaintiffs will submit revised plans to the Corporation within four weeks and that within one week as and by way of stop-gap and temporary arrangement, the plaintiffs are ready and willing to hand

over flat No.203 admeasuring 609.27 sq. ft. carpet area in “C” Wing to the defendant, was recorded.

5. In paragraph-5, the statement of Mr. Dani that the plaintiffs will offer a flat admeasuring 609.27 sq. ft. carpet area in “A” Wing within approximately three years, subject to obtaining Occupation Certificate from the Corporation, was recorded. Assurance of Mr. Dani that after the revised plans are sanctioned, inspection of said revised plans will be given to the defendant within one week from obtaining sanction from the Corporation, was recorded. He also stated that within one week, undertaking on the above lines, will be filed with advance copy to other side.

6. In paragraph-6, the statement of Mr. Damani that the defendant is present in Court and that upon taking instructions from him, he stated that within one week from offering flat No.203 in “C” Wing, the defendant will shift there and hand over possession of the suit premises to the plaintiffs within two weeks, was recorded. Further statement of the defendant that he is ready and willing to accept the allotment of flat in “A” Wing admeasuring 609.27 sq. ft. carpet area either on 4th, 5th or 6th floor on tenancy basis and that the defendant will hand over vacant and peaceful possession of flat No.203 in “C”

Wing within two weeks from the plaintiffs offering to occupy flat in “A” Wing and he will accordingly shift, was recorded. Statement of Mr. Damani that within one week the defendant will file undertaking on the aforesaid lines in this Court, was also recorded.

7. In view thereof, as the parties had arrived at consensus on above lines, both C.R.As. were disposed of. The parties were directed to file undertaking within one week with advance copy to other side. Both C.R.As. were kept for reporting compliance on 20.8.2018.

8. Mr. Dhakephalkar submitted that in pursuance of the order dated 9.8.2018, the plaintiffs have filed undertaking dated 16.8.2018 in this Court. In paragraph-1, the plaintiffs undertook to hand over possession of flats No.203 & 204 totally admeasuring 685 sq. ft. carpet area in 'C' Wing of Om Fortune building, Bhatwadi, final plot No.75, Jambli Galli, Borivali (W), Mumbai – 400 092 to the applicant/defendant as and by way of stop gap and temporary arrangement as transit accomodation.

9. In paragraph-2, they undertook to submit revised plans for 'A' wing at Bhatwadi final plot No.75, Jambli Galli, Borivali (W), Mumbai – 400 092 to the corporation within four weeks from 9.8.2018 i.e. on or before 6.9.2018 for carving out residential flat admeasuring 609.27 sq.

ft. with 5% variation thereof.

10. In paragraph-3, they undertook that after the revised plans are sanctioned, inspection of the revised plans will be given to the defendant within one week from obtaining sanction from the Corporation.

11. In paragraph-4, they undertook to allow flat admeasuring 609.27 sq. ft. carpet area in 'A' wing either on 4th, 5th or 6th floor to the defendant on tenancy basis as permanent alternate accommodation in lieu of the tenanted suit premises on same terms and conditions as are applicable to the tenancy of the present suit premises within a period of approximately three years from 9.8.2018 subject to obtaining occupation certificate from the Corporation as well as subject to conditions of force majeure.

12. In paragraph-5, it was made clear that the aforesaid undertaking is given subject to the defendant complying and obeying his undertaking to be given pursuant to the order dated 9.8.2018 and handing over possession of the suit premises within a period of two weeks from 9.8.2018 in terms of the said order.

13. In pursuance of the order dated 9.8.2018, C.R.As. were listed for reporting compliance on 20.8.2018. On 20.8.2018, at the request of

learned counsel for the applicant both the matters were adjourned to 27.8.2018 for reporting compliance.

14. Present application is taken out by the applicant on 24.8.2018 for the reliefs indicated hereinabove. Civil Application was heard on 27.8.2018 and on the instructions of Ms. Nilam Savla, daughter of the applicant the assertions made in paragraph-8 of the application were deleted. The application was listed for orders on 11.9.2018 at 3:00 p.m. The matter was thereafter placed on 18.9.2018 and was ordered to be listed on 25.9.2018 in the supplementary board. On 25.9.2018, after hearing the parties, the application was listed for passing orders on 27.9.2018. As none appeared on behalf of the applicant, it was adjourned for passing orders on 1.10.2018. On 29.9.2018, the applicant made application before the Hon'ble Chief Justice for transferring the proceedings to some other Court. The application was heard on 1.10.2018 when this fact was brought to the notice of the Court. In view thereof, hearing of the application was deferred till 15.10.2018 and in the meantime Registry was to obtain appropriate orders from the Hon'ble Chief Justice. On 15.10.2018, hearing was deferred to 29.10.2018 to enable the Registry to obtain suitable orders. On 29.10.2018, again it was adjourned to 26.11.2018 to enable the Registry to obtain suitable orders from the Hon'ble Chief Justice.

15. In pursuance thereof, on 21.11.2018 the Registry placed the submission before the Hon'ble Chief Justice soliciting orders on the application dated 29.9.2018 made by the applicant. As per the administrative order, the Registry has placed the matter before this Court.

16. The application was thereafter placed before Hon'ble Mr. Justice M.S. Sonak on 3.12.2018. As this is an application for review, M.S. Sonak, J. directed the Registry to place the matter before the Bench which passed the order dated 9.8.2018. In pursuance thereof, the matter was placed before this Court on 10.12.2018. None appeared for the applicant on 10.12.2018 but the applicant was present in person. At his request, it was adjourned to 17.12.2018. On 17.12.2018, none appeared for the applicant, however, the applicant was present in person. The applicant sought adjournment till 22.12.2018. It was, however, not acceded to and was ordered to be kept at 3:00 p.m. on 21.12.2018 under the caption of 'for dismissal'.

17. Today, again adjournment is sought on the ground that the arguing counsel is in difficulty. Thus, perusal of the entire record shows that the applicant is somehow not willing to proceed with the matter before this Court and is delaying the matter on one pretext or the other.

18. That apart, the order under review is passed by consent of parties. In pursuance thereof, the plaintiffs have filed their undertaking. The applicant has not filed undertaking till date. Even perusal of the prayer in the application shows that the applicant is praying for providing premises admeasuring 609.27 sq. ft. (carpet) in 'A' wing. That was also provided in the order dated 9.8.2018. In view thereof, no case is made out for reviewing the order dated 9.8.2018. The application fails and the same is dismissed.

19. Oral request for stay of this order for a period of eight weeks is rejected.

20. At this stage, Mr. Dhakephalkar seeks extension of time stipulated in clause (2) of the undertaking dated 16.8.2018 by a period of four weeks from today on the ground that as the application was taken out seeking review of the order dated 9.8.2018, the plaintiffs did not submit the revised plans. In view thereof, the time stipulated in clause (2) of the undertaking dated 16.8.2018 is extended by four weeks from today. Undertaking of the plaintiffs is accepted. Decree shall be drawn as per order dated 9.8.2018 passed in the Civil Revision Applications. The plaintiffs are at liberty to execute the decree in accordance with law. Order accordingly.

(R. G. KETKAR, J.)