

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.30 OF 2017**

Vidya Narendra Jadhav & Anr.] Petitioners
Vs.
Dr. Bhupendra Tapidas Dodhiawala & Anr.] Respondents

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Mr. Ish Jain a/w Rajan Yadav i/b Kiran Jain & Co., for petitioners.
Mr. Jaydeep Deo, for Respondents No.1 and 2.

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CORAM : R.G. KETKAR, J.

DATE : 17th JULY, 2018.

P.C:

Heard Mr. Jain, learned Counsel for the petitioners and Mr. Deo, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as "plaintiffs" have challenged;

[1] the judgment and order dated 21st July, 2016 below
Exhibit 18 as also

[2] the judgment and order dated 19th August, 2016 below
Exhibit 10

passed by the learned Judge, Court Room No.35 of the Court of Small Causes at Mumbai (Bandra Branch) in R.A.E & R Suit No.256/527 of 2014.

3. Rule. Mr. Deo waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of

learned Counsel for the parties, Rule is made returnable forthwith and Petition is taken up for final hearing. Application Exhibit 10 was filed by the plaintiffs, inter alia, praying for following reliefs;

- (a) injunction restraining the defendants, their servants, agents and representatives from parting with possession and/or creating any third party rights in respect of 1st and 2nd floors at Shubham situate at Plot No.16/B, Anand Vihar Co-operative Housing Society Limited, 19-A Road, Khar (W), Mumbai 400 052 (for short 'suit premises').
 - (b) for appointing a fit and proper person as Commissioner along with representative of the plaintiffs and Architect and Photographer for inspection of the suit premises for taking measurements and photographs and submitting report including as to the condition and lay out of the suit premises.
 - (c) for directing the defendants to pay rent @ Rs.50,000/- per month for the period from occupation of the suit premises and continue to pay the same during pendency of the suit.
4. Defendants took out application Exhibit 18, inter alia, praying;
- (a) for permission to deposit a sum of Rs. 44,000/- being the amount payable up to 31st December, 2014 in the Court.
 - (b) for permitting them to deposit amount @ Rs.1800/- per month in the Court from 1st January, 2015 onwards on account and without prejudice to the rights and contentions of the parties.
 - (c) for issuing appropriate directions for payment of outgoings viz; municipal taxes, water bills and electricity charges from time to time.

5. In support of this Petition, Mr. Jain invited my attention to the agreement dated 4th September, 1992 entered into by the parties. Clauses 2 to 4 reads thus;

“2.The DEVELOPERS have agreed to bear and pay all costs, charges and expenses for preparing and submitting the “PLANS” and getting them approved and sanctioned by the Municipal and other authorities concerned, and also agreed to bear and pay the costs, charges and expenses of architects, civil engineers and other experts, and also for the cost of building materials such as cement, chunam, timber, iron, scaffoldings, and also the water, electricity and assessment charges and commence, and complete the construction of the entire said new building by demolishing the existing ground floor structure on the said “PLOT”.

3.It is agreed that in consideration of the “DEVELOPERS” constructing the said new building on the said 'PLOT' of 'OWNER' as per Municipal approved and sanctioned plan, the “OWNER” has agreed (a) to let to the DEVELOPERS all the premises and areas on the 1st floor (i.e area _____sq. ft.) and the 2nd floor (i.e area _____sq. ft.) of the said new building for their residential use and occupation as tenants, and (b) not to charge the DEVELOPERS for the tenancy rights or any other charges for such letting except the monthly standard rent after retaining for himself all the Premises and areas on the ground floor (i.e area_____sq. ft.) including compound and the third floor (i.e area_____sq. ft.) including terrace for his use and occupation.

4.The “OWNER” has agreed to issue, to the “DEVELOPERS” the Rent Bill, indicating the standard monthly rent to be charged in the name of the “DEVELOPERS” (i.e. Proposed Tenants) Dr. Bhupendra Tapidas Dodhiwala and Smt. Chandramani Tapidas Dodhiwala from the date of issue of Occupation Certificate by the Municipal Authority and the said standard monthly rent will be charged by the OWNER as assessed by the Municipal Corporation of Greater Bombay and also the maintenance charges of the said new building will be paid by the DEVELOPERS as mutually agreed and decided between the OWNER and the DEVELOPERS”.

6. Mr. Jain invited my attention to paragraph 4 of the application Exhibit 18 filed by the defendants where the defendants expressed their willingness to pay 45% of the amount paid by the plaintiffs towards municipal taxes, water bills, electricity bills and maintenance, if the plaintiffs produce the receipts showing payment of these charges. Mr. Jain submitted that the plaintiffs are ready and willing to produce the receipts evidencing payment of municipal taxes, water bills, electricity bills and maintenance. During the course of hearing, Mr. Jain has restricted his challenge only in respect of prayer clause (c) of application Exhibit 10 as the plaintiffs have filed appeal challenging rejection of prayers (a) and (b) of Exhibit 10.

7. On the other hand, Mr. Deo submitted that the defendants are paying maintenance charges and they will produce receipts evidencing payment of maintenance charges. He submitted that the plaintiffs claim that the suit premises admeasures 810.85 square feet. As against this, it is the claim of the defendants that suit premises admeasures 650 square feet. The defendants will substantiate their case by producing material in the trial Court.

8. A perusal of the impugned order shows that the learned trial Judge has not given any reason while passing the impugned orders. The learned trial Judge has also not considered the agreement dated 4th September, 1992 entered into between the parties. That apart, the learned trial Judge has also not considered valuation report relied by the plaintiffs while passing impugned orders. As the defendants expressed willingness to deposit amount @ Rs. 1800/- per month, the learned trial Judge straightway allowed the application Exhibit 18 and permitted the defendants to deposit that amount. The learned trial Judge before passing the impugned orders should have considered the material on record and also permitted the parties to produce documents in order to substantiate their respective cases. As the learned trial

Judge has not given any reason, the impugned orders cannot be sustained and are liable to be set aside. The learned trial Judge with respect has not disposed of the applications in a satisfactory manner. The impugned orders are accordingly set aside. The applications Exhibit 10 and 18 are restored to the file of the learned trial Judge for deciding afresh. The parties are at liberty to produce the material on record in order to substantiate their respective cases. The learned trial Judge will consider that material and dispose of the applications by giving reasons. Rule is made absolute in the aforesaid terms.

9. The learned trial Judge will decide application Exhibit 10 only in respect of prayer clause (c) and Exhibit 18 together and pass a common order. All contentions of the parties on merits are expressly kept open.

[R.G. KETKAR, J.]