Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
EXECUTION APPLICATION NO. 1350 OF 2018

Shree Akshar Corporation …Petitioner
Versus
Rushabh Apartments Coop Hsg Soc Ltd …Respondent

CHAMBER SUMMONS NO. 784 OF 2018
IN
EXECUTION APPLICATION NO. 1350 OF 2018

Shree Akshar Corporation …Petitioner
Versus
Rushabh Apartments Coop Hsg Soc Ltd …Respondent
And
Sharukh Calcattawala & Ors ...Prop. Respondents

CHAMBER SUMMONS NO. 1019 OF 2018
IN
EXECUTION APPLICATION NO. 1350 OF 2018

Anand K Nagrale ...Applicant
In the matter between
Shree Akshar Corporation …Petitioner
Versus
Rushabh Apartments Coop Hsg Soc Ltd …Respondent

Dr Birendra Saraf, *with Mr Ranjeev Carvalho & Mr Ritesh Jain, i/b M/s. MJ Juris, for the Applicant in CHS/784/2018.*
Mr Sharan Jagtiani, *with Mr Sachin V Masurkar, Ms Aarti Kulkarni*

& Ms Sunitha Perumal, i/b Mr Sachin V Masurkar, for Respondent in Chamber Summons No.784 of 2018 and in the Execution Application.

Mr Shriram Kulkarni, *i/b Ms Sheetal U Malvankar, for proposed Respondent No. 2 in Ch/S/784/2018.*

Ms Swati Deshpande, *i/b M/s MDP & Partners, for proposed Respondent No. 3 in CHS/784/2018.*

Mr Sanjeev Mishra, *for proposed Respondents Nos. 4, 5(b), 6, 7(a), heirs of 9(b), heirs of 10(b) and 11 in CHS/784/2018.*

Mr Ravindra G Bhat, *for proposed Respondent No. 7(b) in in CHS/784/2018, the applicant in CHS/1019/2018.*

Mr Piyush Raheja, *with Mr Jitendra Jain, i/b Mr Yogesh Adhia, for proposed Respondent No. 8(b) in CHS/784/2018.*

Vinay Keshavlal Gandecha, *partner of the Decree Holder, present.*

CORAM: G.S. PATEL, J
DATED: 5th October 2018

PC:-

A. BACKGROUND

1. Having regard to the order that follows, one based on Minutes tendered by the parties, a brief factual background is necessary.

2. The Applicant/Award Holder, Shree Akshar Corporation ("**SAC**") is a partnership firm of developers. One of its partners, Vinay Keshavlal Gandecha, is present in Court. The Award Debtor is the Rushabh Apartments Co-operative Housing Society Ltd ("**the Society**"). It was the sole respondent to an arbitration arising out of a registered Development Agreement dated 18th January 2007 ("**the DA**") for re-development and reconstruction of the Society's

building at S.No.32, Hissa No.1, CTS No.11, admeasuring about 1520 sq mts, at 17/1 Ambivli, Andheri (W), Mumbai 400 053 and the building or buildings on that plot (there are certainly multiple wings). The Society has 38 members. SAC obtained development rights under the DA. Disputes arose between SAC and the Society. By an order dated 17th October 2016, Kathawalla J referred these disputes to the sole arbitration of Mr AK Randeria, Advocate of this Court. SAC filed its Claim Statement demanding specific performance. Those disputes were settled on 7th December 2016 when Consent Terms were presented to the learned Sole Arbitrator. He made a Consent Award on those Consent Terms on that day itself, 7th December 2016. The Society confirmed the subsistence of the DA and an accompanying Power of Attorney. The Consent Terms modified some provisions and clauses of the DA. The Consent Terms and Award required the Society to deliver vacant possession of the flats in the Society's building within one month of written intimation by SAC on receipt of the IOD. SAC wrote to the Society on 23rd December 2017 saying it had the IOD in hand and demanding possession within a month. For various reasons not immediately germane today since there is to be no order on merits, possession was not given.

3. SAC and the Society executed Supplementary Deeds ("**SDs**") dated 16th March 2018 and 8th May 2018 incorporating the changes to the DA as agreed in the Consent Terms and Award. The Society's members were made parties to these SDs. Of the Society's 38 members, 29 signed the SDs, and those SDs are registered. The remaining nine did not sign the SDs. Those who did

sign the SDs also have Permanent Alternative Accommodation Agreements ("**PAAAs**") with SAC.

4. There is some correspondence of 2018 between the Society and those of its members who did not sign the SDs, but this is largely unimportant today.

5. In the present Execution Application, and its accompanying Chamber Summons No. 784 of 2018, these nine opposing members are sought to be joined as Respondents Nos. 2 to 11, though there does not seem to be a separate Chamber Summons for impleadment. In this Chamber Summons, SAC seeks orders of forcible possession against these members of their respective residential units. Some of these members are said to have sold their flats; in some cases the flats are given out on leave and license to third parties (who are not joined); and in some cases there are heirs, the original member having passed on. Thus, there are to the Chamber Summons Respondents Nos.5(a) and 5(b), 7(a) and 7(b), 8(a) and 8(b), 9(a) and (9b) and 10(a) and 10(b). Then there is Chamber Summons No. 1019 of 2018 by proposed Respondent No.7(b), essentially seeking benefits under the DA and an anticipated PAAA.

6. I was supplied a chart of these opposing members/occupants. There were columns in that chart regarding membership, the factum of residence, etc. I am leaving out those details while reproducing the chart (below) to show the names of the opponents, their predecessors-in-title if any and the flat numbers in question.

Res No	Name of the Objector	Flat No
2	Shahrukh Calcattawala	G-3, B Wing
3	Ms Kalpana Patil	F-6, B Wing
4	JH Gupta	G-2, C Wing
5(a)	Abdul Kadar Khan	C-202, C Wing
5(b)	Ms Naaz Ekta	C-202, C Wing
6	Phoolchand Gupta	G-1, C Wing
7(a)	Yadav Kumar Rao	303, A Wing
7(b)	Anand K Nagrale	303, A Wing
8(a)	Ms Piedad P Cardeiro	501, A Wing
8(b)	Smt Shardaben R Tanna and Ajay R Tanna	501, A Wing
9(a)	Ms Shobha K Surve	701, A Wing
9(b)	Hiralal Gupta (*since deceased*)	701, A Wing
10(a)	Vishwanath Shetty	702, A Wing
10(b)	HIralal Gupta (*since deceased*)	702, A Wing
11	David John Rodrigues	F-4, First Floor, B Wing

7. After I heard Dr Saraf for SAC, Mr Jagtiani for the Society, and Mr Kulkarni, Ms Deshpande, Mr Mishra, Mr Bhat and Mr Raheja for some of the proposed Respondents for some time, parties agreed on a compromise. This is, of necessity, segregated per flat (Respondent No.11 stands on a different footing). Consent Minutes of the Order were tendered separately in regard to each of these remaining nine flats and the occupancy claimed by Respondent No.11, David John Rodrigues. The individual Consent Minutes cover proposed Respondents Nos. 2, 3, 4, 5(b), 6, 7(a), 8(a), 8(b), 9(b), 10(b) and 11. The drafts tendered with my handwritten notations are retained on record with today's date.

8. Before I proceed to the individual orders, for good order and completeness, I will allow the proposed amendment to implead the parties shown above as Respondents with their respective numbering as parties to SAC's Execution Application and to its Chamber Summons No. 784 of 2018. The original proposed

Respondent No.9(b) and 10(b), Hiralal Gupta, has since passed away. His heirs and legal representatives are to be impleaded as Respondents Nos.9(b)(i), 9(b)(ii), 10(b)(i), 10(b)(ii), etc. Amendments to be carried out without need of reverification within two weeks. The appearing respondents waive service of the amended Execution Application and Chamber Summons.

9. With this, I now turn to consent orders sought to be taken in the individual cases. There is a set of directions or orders common to all Respondents, and these are clubbed together in the last section of this order.

B. RESPONDENT NO. 2

10. Respondent No. 2, Sharukh Calcattawala ("**Calcattawala**") is present in Court. He occupies Flat No. G-3, B Wing. He is a member of the Society. Calcattawala has challenged the Consent Award in Arbitration Petition (L) No. 903 of 2018. It is pending admission, the delay having been condoned and is apparently to be listed on Monday, 8th October 2018.

11. Calcattawala has a dispute about the precise area of his Flat No.G-3 in B Wing. He says its carpet area is 337 sq ft, but in the DA or one of its annexures, it is shown as only 320 sq ft. Although the prepared Consent Minutes provided for a measurement of the flat by a licensed surveyor and that this was to be jointly done by SAC and Calcattawala, while taking up the Consent Minutes, Dr Saraf

received instructions from SAC's partner, Mr Gandecha, present in Court to accept Calcattawala's claim for 337 sq ft on a without prejudice basis to bring the dispute to a quietus. This obviates the need for the appointment of a Receiver, etc. On taking instructions from Calcattawala, Ms Malvankar accepts this offer.

12. Calcattawala also raises a grievance about the provision of a car parking space to each member. Mr Kulkarni says Calcattawala is entitled in law to be allotted a car parking space. Dr Saraf is correct in saying that the actual allotment is a matter between the Society and its members. He accepts that SAC will provide to the Society an aggregate space for car parking as required by law and all applicable rules, including the Development Control Regulations. It will then be for the Society to allocate, allot or distribute individual car parking slots between its members in such manner as the law requires. As far as SAC's obligations are concerned, this seems to me to be both correct and reasonable. Mr Jagtiani states that the Society will, of necessity, follow all applicable norms and rules regarding the allotment of car parking spaces. This statement is accepted as an undertaking. Ms Malvankar states on instructions that this is acceptable.

13. It goes without saying that in the matter of allotment of car parking spaces, whether open or under stilts, the Society and its members will be bound to act in accordance with law and all applicable rules and regulations, and in consonance with decisions

of this Court, including the recent decision of RD Dhanuka J in *Royal Manor CHSL v Angana Bharali Das & Ors*.[1]

14. Calcattawala instructs Ms Malvankar to say that he withdraws all allegations against SAC and the Society. He undertakes to withdraw his Section 34 Arbitration Petition (L) No. 903 of 2008 in the course of a week. The statement is accepted as an undertaking to this Court.

15. The set of Common Directions noted below will also, by consent, apply to Calcattawala and as between him, SAC and the Society.

C. RESPONDENT NO.3

16. Respondent No.3 is Mrs Kalpana Patil. She occupies Flat No. F-6, B Wing. She is a member of the Society. She has agreed to vacate the flat upon a commitment by SAC to provide her with all benefits under the Consent Award. That is provided for in the section of Common Directions below.

1 Writ Petition No. 9262 of 2015 (Appellate Side), decided on 12th September 2018.

D. RESPONDENT NO.4

17. Respondent No.4 is one JH Gupta. He occupies Flat No. G-2, C-Wing. He is a member of the Society. He has agreed to vacate the flat upon a commitment by SAC to provide him with all benefits under the Consent Award. That is provided for in the section of Common Directions below.

18. It seems that JH Gupta has given this flat on leave and license to a third party. It is his responsibility to obtain possession from the licensee. To ensure that there is no delay, it is agreed that the Court Receiver, High Court, Bombay will take possession of Flat No. G-2, C Wing from either Gupta or his licensee, as the case may be, and deliver possession to SAC within the time specified below. Any disputes between Gupta and his licensee will be resolved by them separately, and their contentions *vis-à-vis* each other are not determined by this order, but are kept open. The licensee can have no independent right in respect of the flat in question, and cannot obstruct development. The licensee is not even a member of the Society. The Court Receiver will act on production of an authenticated copy of this order.

E. RESPONDENT NO. 5(B)

19. Respondent No. 5(a) is one Abdul Kadar Khan. He sold the Flat No. 202, C Wing Respondent No. 5(b), Ms Naaz Ekta. She has been accepted as a member of the Society.

20. She has agreed to vacate the flat upon a commitment by SAC to provide her with all benefits under the Consent Award. That is provided for in the section of Common Directions below.

F. RESPONDENT NO. 6

21. Respondent No. 6, Phoolchand Gupta, occupies Flat No. G-1, C-Wing as a member of the Society. He has agreed to vacate the flat upon a commitment by SAC to provide him with all benefits under the Consent Award. That is provided for in the section of Common Directions below.

22. It seems that Phoolchand Gupta has given this flat on leave and license to a third party. It is his responsibility to obtain possession from the licensee. To ensure that there is no delay, it is agreed that the Court Receiver, High Court, Bombay will take possession of Flat No. G-1, C Wing from either Phoolchand Gupta or his licensee, as the case may be, and deliver possession to SAC within the time specified below. Any disputes between Phoolchand Gupta and his licensee will be resolved by them separately, and their contentions *vis-à-vis* each other are not determined by this order, but are kept open. The licensee can have no independent right in respect of the flat in question, and cannot obstruct development. The licensee is not even a member of the Society. The Court Receiver will act on production of an authenticated copy of this order.

G. RESPONDENT NOS. 7(A) AND 7(B)

23. Respondent No. 7(a), Yadav Kumar Maruti Rao, occupies Flat No. 303, A-Wing. There is a dispute between him and Respondent No. 7(b), Anand Kawadugi Nagrale (also the applicant in Chamber Summons 1019 of 2018) in respect of this flat. Nagrale claims to have bought this flat from Rao. Nagrale has filed Suit No. 1899 of 2015 in the City Civil Court at Dindoshi for specific performance. It is pending. Rao and Nagrale are both before me. They both desire enforcement of the DA. They agree not to demand possession of the permanent alternate accommodation flat or the monetary compensation until final disposal of the City Civil Court suit.

24. As between Rao, Nagrale and SAC:

(a) The Court Receiver will proceed to take possession of Flat No. 303, A Wing, from the person in occupation, whether Rao or Nagrale, and deliver possession to SAC as provided in the Common Directions below.

(b) SAC will deposit and continue to deposit all amounts and compensation due under the DA and the Consent Award in respect of Flat No.303, A-Wing with the Court Receiver who will invest these amounts in accordance with the usual practices of that office.

(c) The Court Receiver will execute the necessary PAAA in respect of Flat No. 303, A-Wing with SAC and this will be registered.

(d) SAC will deliver the permanent alternate accommodation in the reconstructed building in lieu of Flat No. 303, A-Wing to the Court Receiver once re-development is complete and the Occupation Certificate ("**OC**") is obtained.

(e) That permanent alternate accommodation flat in lieu of Flat No.303, A-Wing will continue under Receivership until the final disposal of Nagrale's City Civil Court suit.

(f) Within two weeks of the final decision by the City Civil Court in that suit, the successful party will move the Court Receiver. On production of an authenticated copy of the order of the City Civil Court finally disposing of the Suit, the Court Receiver will deliver possession of the permanent alternate accommodation flat in lieu of Flat No. 303, A-Wing to the party which succeeded in the City Civil Court suit, and will also pay out all amounts deposited with all interest earned thereon.

(g) None of the rival contentions in the City Civil Court suit are determined or shall be deemed to have been

determined by this order. All contentions are kept open for decision in those proceedings. The fact that the Court Receiver has been appointed in these proceedings does not preclude the City Civil Court from specifically including in its final order a direction to the Court Receiver to deliver possession to the successful party in that litigation, and from making an order for payment by the Court Receiver of all amounts deposited with his office and the interest accrued thereon.

25. This order prejudices neither Rao nor Nagrale. In consequence of this order, Nagrale's Chamber Summons 1019 of 2018 is disposed of.

H. RESPONDENT NO. 8(B)

26. Respondent No. 8(a), Ms Piedad P Cardeiro, occupies Flat No. 501, A Wing. There is a dispute between her and Respondent No. 8(b), Ms Shardaben R Tanna & Ajay R Tanna ("**the Tannas**"). Ms Cardeiro is in possession of the flat. The Tannas have filed Suit No. 798 of 2015 (Lodging No. 743 of 2015) in this Court. It is pending. The Tannas are before me. Ms Cardeiro is not, despite notice and service. But she cannot, as a sole person, even though a member, hold up the entire re-development project. Her rights must be safeguarded. The Tannas agree not to demand possession of the

permanent alternate accommodation flat or the monetary compensation until final disposal of their suit.

27. As between Ms Cardeiro, the Tannas and SAC:

(a) The Court Receiver will proceed to take possession of Flat No. 501, A Wing, from Ms Cardeiro, and deliver possession to SAC as provided in the Common Directions below.

(b) SAC will deposit and continue to deposit all amounts and compensation due under the DA and the Consent Award in respect of Flat No.501, A-Wing with the Court Receiver who will invest these amounts in accordance with the usual practices of that office.

(c) The Court Receiver will execute the necessary PAAA and SD in respect of Flat No. 501, A-Wing with SAC and this will be registered.

(d) SAC will deliver the permanent alternate accommodation in the reconstructed building in lieu of Flat No. 501, A-Wing to the Court Receiver once re-development is complete and the Occupation Certificate ("**OC**") is obtained.

(e) That permanent alternate accommodation flat in lieu of Flat No.501, A-Wing will continue under Receivership

until the final disposal of the Tanna's High Court Suit (L) No. 743 of 2015.

(f) Within two weeks of the final decision by the Court, the successful party will move the Court Receiver. On production of an authenticated copy of the order of the Court finally disposing of the Suit, the Court Receiver will deliver possession of the permanent alternate accommodation flat in lieu of Flat No. 501, A Wing to the party which succeeded in the High Court suit, and will also pay out all amounts deposited with all interest earned thereon.

(g) None of the rival contentions in the Tanna's High Court suit are determined or shall be deemed to have been determined by this order. All contentions are kept open for decision in those proceedings.

I. RESPONDENT NO. 9(B)

28. Respondent No. 9(a), Ms Shobha K Surve, was the original member of the Society and used to occupy Flat No. 701, A Wing. There was a dispute between her and Respondent No. 9(b), Hiralal Gupta in respect of that flat. Hiralal Gupta claimed to be the purchaser of that flat. He had filed Suit No. 509 of 2000 in the City Civil Court. This was decreed on 22nd December 2014. Hiralal Gupta has passed away. Mr Mishra for the heirs of Hiralal Gupta

states that no appeal has been served on the heirs and legal representatives of Hiralal Gupta. The flat has been given on leave and license to a third party by Hiralal Gupta's heirs.

29. It is the responsibility of the heirs and legal representatives of Hiralal Gupta to obtain possession from their licensee. To ensure that there is no delay, it is agreed that the Court Receiver, High Court, Bombay will take possession of Flat No. 701, A Wing from either Hiralal Gupta's heirs/legal representatives or their licensee, as the case may be, and deliver possession to SAC within the time specified below. Any disputes between Hiralal Gupta's heirs and legal representatives on the one hand and their licensee will be resolved by them separately, and their contentions *vis-à-vis* each other are not determined by this order, but are kept open. The licensee(s) can have no independent right in respect of the flat in question, and cannot obstruct development. The licensee(s) is/are not even a member of the Society. The Court Receiver will act on production of an authenticated copy of this order.

30. The Common Directions below will apply.

J. RESPONDENT NO. 10(B)

31. Respondent No. 10(a), Vishwanath Shetty, was the original member of the Society and used to occupy Flat No. 702, A Wing. There was a dispute between him and Respondent No. 10(b), Hiralal Gupta in respect of that flat. Hiralal Gupta claimed to be the

purchaser of that flat. He had filed Suit No. 509 of 2000 in the City Civil Court. This was decreed on 22nd December 2014. Hiralal Gupta has passed away. Mr Mishra for the heirs of Hiralal Gupta states that no appeal has been served on the heirs and legal representatives of Hiralal Gupta. The flat has been given on leave and license to a third party by Hiralal Gupta's heirs.

32. It is the responsibility of the heirs and legal representatives of Hiralal Gupta to obtain possession from their licensee. To ensure that there is no delay, it is agreed that the Court Receiver, High Court, Bombay will take possession of Flat No. 702, A Wing from either Hiralal Gupta's heirs/legal representatives or their licensee, as the case may be, and deliver possession to SAC within the time specified below. Any disputes between Hiralal Gupta's heirs and legal representatives on the one hand and their licensee will be resolved by them separately, and their contentions *vis-à-vis* each other are not determined by this order, but are kept open. The licensee(s) can have no independent right in respect of the flat in question, and cannot obstruct development. The licensee(s) is/are not even a member of the Society. The Court Receiver will act on production of an authenticated copy of this order.

33. The Common Directions below will apply.

K. RESPONDENT NO. 11

34. Respondent No. 11, David John Rodrigues ("**Rodrigues**") claims to be a member of the Society. He does not have a share certificate. His membership is disputed. He claims to occupy Flat No. F-4, 1st Floor, in the Society's Sai Chhaya Building.

35. It is agreed that the Court Receiver, High Court Bombay shall take possession of Flat No. F-4, 1st Floor, Sai Chhaya Building from Respondent No.11 and shall deliver possession of that flat to SAC as provided in the Common Directions below.

36. SAC shall deposit and continue to deposit with the Court Receiver all the monetary amounts and compensation under the DA read with the Consent Award dated 7th December 2016. The Court Receiver, High Court, Bombay shall invest the money deposited by SAC in respect of the said flat.

37. If by the time SAC receives an Occupation Certificate, Rodrigues has been able to establish his membership of the Society, all amounts deposited with the Court Receiver, with accrued interest, shall be paid out by the Court Receiver to Rodrigues. Further, if Rodrigues establishes his rights as member before SAC receives an Occupation Certificate, SAC will deliver possession of the Permanent Alternate Accommodation in lieu of Room No. F-4, 1st Floor, Sai Chhaya Building of the Society to the Court Receiver, High Court at Bombay, who shall in turn put Rodrigues in

possession of that permanent alternate accommodation flat, upon execution and registration of PAAA and SD.

38. If, by the time SAC receives an Occupation Certificate, Rodrigues has not been able to establish his right as a member of the Society, SAC will be at liberty to deal with such Permanent Alternate Accommodation as it deems fit and proper. The Court Receiver will also then release the entire amount deposited with him, and all accrued interest, to SAC.

39. The Common Directions will otherwise apply.

L. COMMON DIRECTIONS

40. Possession is to be delivered either by the party in question or by the Court Receiver as the case may be to SAC within three weeks from today, i.e., on or before 26th October 2018. The Consent Minutes provided for two weeks; I have expanded this by a week in view of the imminent religious holidays and also since in some cases there are licensees and parties yet in occupation who must be afforded a reasonable time to vacate. Where possession is agreed to be given by one of the parties before the Court and who have tendered Minutes, the undertaking to deliver possession is accepted as an undertaking to the Court. Where the Court Receiver is to take possession, he will do so at least 72 hours before 26th October 2018.

41. Mr Vinay Keshavlal Gandecha the Partner of the Applicant Developer undertakes that all benefits under the Consent Award dated 7th December 2016 will be given to the parties delivering possession as noted above, or, where there are pending disputes and a Court Receiver has been appointed, deposited with the Court Receiver as noted above. The undertaking is accepted as an undertaking to the Court.

42. SAC and Respondents Nos. 2, 3, 4, 5(b) and 6 and also the heirs of Respondents Nos. 9(b) and 10(b) agree and undertake to sign and execute the necessary SDs and P3As at the time of delivery of possession with the parties in occupation or the Court Receiver as the case may be.

43. SAC agrees and undertakes to provide all monetary benefits and compensation in terms of the modified DA to those delivering possession, or to deposit the monetary benefits and compensation with the Court Receiver as the case may be. The monetary benefits and compensation will be exactly as have been made available to the 29 members who signed the SDs and with whom PAAAs have been executed. All PAAAs to be registered as required by law.

44. It is clarified that for the present Respondents, transit rent/compensation will run from the date of delivery of possession and no earlier date.

45. SAC and the Society will be absolved of all obligations under the Consent Award dated 7th December 2016 upon the parties

delivering possession directly being given benefits in respect of the respective flats; and where a Court Receiver is appointed, upon SAC depositing with the Court Receiver all benefits as mentioned above.

46. The parties to the Consent Minutes agree and undertake to provide an appropriate indemnity bond in respect of the respective flats to SAC and the Society as indicated above.

47. The Execution Application and all interim applications are disposed of in these terms. There will be no order as to costs. Liberty to the parties to apply.

(G. S. PATEL, J)