

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal (ST) No.1658/2013

Dilipbhai V. Bhagat Appellant

Vs.

Rajnikant Abheychand Mandalia Respondent

Mrs. Tanaya Jha for the Appellant
Mr. P. J. Thorat for the Respondent

CORAM : K.K.TATED.J.
DATED : JUNE 18, 2019

P.C.

1 Pursuant to the praecipe filed by the learned counsel for the Appellant, the matter is taken on production board.

2 Both the counsel submit that the matter is settled out of court. They tendered Consent Terms dated 18.06.2019 duly signed by Respondent No.1, Appellant and their respective counsel. Same are taken on record and marked "X" for identification, which read thus:

CONSENT TERMS

The present First Appeal is filed by the Appellant challenging the Judgment and Decree dated 17th September, 2012 passed by the City Civil Court Civil at Bombay in L.C. Suit No.472 of 2011 thereby decreeing the Suit filed by the Respondent No.1.

The Respondent No.1 had filed L.C. Suit No.472 of 2011 challenging the Notice bearing No.N/BF/TP-II/135/351, dated 12th February, 2009 and the Order dated 15th February, 2011 passed by the Respondent No.2 i.e. Mumbai Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of the structure being occupied area No.24A & 24B, totally admeasuring 32'3" x 10'3" made of B.M. Walls with A.C. Sheet roof wherein business is conducted by the Respondent No.1 in the name of M/s.Morbiwala Sweets & Farsan, situate near Sai Krupa Building, M.P. Vaidya Marg, Plot No.125, Ghatkopar (East), Mumbai - 400 077.

The Appellant is the Landlord and owner of the building known as "Sai Krupa" and the Respondent No.1 is the occupier in respect of the premises bearing Nos.24A & 24B in the existing structure known as Sai Krupa, situated at CTS No.5874 of Village Ghatkopar Kirol Hissa No.125, TPS Scheme III of Ghatkopar Kirol, M.P. Vaidya Marg, Ghatkoar (East), Mumbai 400 077 and is in exclusive and physical possession of the same.

That on the basis of the complaint filed by the Appellant with the Respondent No.2 Mumbai Municipal Corporation the Asst. Municipal Commissioner, N/Ward had issued Notice bearing No.N/BF/TP-II/135/351, dated 12th February, 2009 under Section 351 of the Mumbai Municipal Corporation Act, 1888 in respect of the said structure.

That being aggrieved by the Judgment and Decree dated 17th September, 2012 passed by the Learned Judge, City Civil Court at Mumbai in L.C. Suit No.472 of 2011 the Appellant has filed the present First Appeal.

The Appellant and the Respondent No.1 have settled the dispute amicably and have further agreed to file the present Consent Terms on the following terms and conditions :-

1. The Respondent No.1 has agreed to surrender the clear, vacant and peaceful possession of the premises bearing No.24A & 24B to the Appellant for the purpose of demolishing the existing structure and construction of new building thereon as per the plans and specifications that may be approved by the Municipal Corporation of Greater Mumbai (**M.C.G.M.**), at his own costs and expenses.
2. The Appellant undertakes to provide permanent alternate accommodation in the form of Residential premises admeasuring 235 Sq. Feet carpet area on ownership basis against Rs.5,20,000/- in the new building which is proposed to be constructed at the said site in accordance with the plans and specifications as sanction by the M.C.G.M.
3. The Appellant agrees and undertakes to pay to the Respondent No.1 a sum of Rs.17,500/- per

month towards the rent for acquiring temporary alternate accommodation (transit accommodation) during the period of construction of the new building initially for a period of 18 months from the date of full CC. It is agreed by the Respondent Number 1 that the amount of pending rent and other dues which is Rs.45,080/- will be adjusted from this temporary alternate accommodation amount.

4. The Appellant further agreed and undertakes to pay the monthly rent regularly to the Respondent No.1 through the period of development (i.e. from full C.C) of the suit premises and construction of the new building and the same shall be paid till the Appellant hands over the possession of the permanent /alternate accommodation to the Respondent No.1 in the proposed new building on ownership basis totally against Rs.5,20,000/-.
5. It is agreed by and between the parties that the parties will execute a separate agreement recording the terms and conditions agreed upon by and between them for the proposed development and allotment of permanent alternate accommodation to the Respondent No.1, in lieu of surrendering of occupation of area. The said Agreement shall be duly stamped and registered with the office of Sub-Registrar of Assurances at Mumbai and the stamp duty and

registration charges and taxes shall be borne and paid by the Respondent No.1 exclusively.

6. The Respondent No.1 when called upon by the Appellant agrees and undertakes to shift to the temporary alternate accommodation of his choice to be acquired by him during the period of construction of the proposed new building and hand over the physical possession of the suit premises to the Appellant for demolition and construction thereon a new building.
7. It is further agreed by and between the parties that on receipt of Commencement Certificate, the Appellant will give a Notice in writing to the Respondent No.1 for vacating the suit premises and the Appellant will make every endeavor to complete the construction of the new building within a period of 24 months after receiving the Commencement Certificate.
8. The Respondent No.1 agrees and undertakes to pay a sum of Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand Only) to the Appellant in two parts i.e. Rs.2,60,000/- at the time of signing of the present consent terms and remaining amount of Rs.2,60,000/- when Appellant executes the Agreement for Permanent alternate accommodation in favour of the Respondent No.1.
9. That there shall be no Order as to costs.

10. The present First Appeal be disposed off in view of the present Consent Terms.

3 Undertaking given by the parties and recorded in the Consent Terms are accepted.

4 The First Appeal stands disposed of in terms of the Consent Terms.

5 The Consent Terms shall be treated to be part and parcel of the decree.

6 Refund of Court Fees as per the Rules.

(K.K.TATED, J.)