

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 34 OF 2019
IN
SUIT NO. 1430 OF 2018

Gokul Vrindavan Co-operative Housing
Society Limited ... Plaintiff.

Vs.

Heena Builders and Developers and Ors.... Respondents

.....

Mr. Anoshak Davar a/w Mr. M.P. Vora i/b M/s. PramodKumar & Co.
for Plaintiff.

Mr. B.H. Mehta i/b Veena Khatri for Defendant Nos. 1 to 3

Mr. Shashank N. Fadia for Defendant No.11.

Mr. D.R. Shetty, Court Receiver present.

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CORAM: K.R. Shriram, J.

DATE : 22nd February 2019.

PC :

. Mr Mehta for Defendant Nos. 1 to 3 stated that Court Receiver's report be deferred until Notice of Motion No. 333 of 2019 that he has lodged is heard and disposed.

I am not inclined to grant the request of Mr. Mehta.

2. The Court Receiver's revised report is for the prayers (a) and (b) which read as under:

“(a) What steps Court Receiver should take to take physical Possession of Flat Nos. A-101 and A-104.”

OR

“(b) The Court Receiver may be permitted to take forcible possession of Flat Nos. A-101 and A-104, if necessary with the help of local police authority.”

3. On 22nd October 2018 (Exhibit-A to this Court Receiver's Report), this Court was pleased to pass the following order :-

“1. The order passed in Notice of Motion (L) No. 2192 of 2018 in Suit (L) No. 1242 of 2018, dated 11th October, 2018 appointing the Court Receiver in respect of Flat Nos. A-101 and A-104, 1st Floor, A Wing, Gokul Vrindavan, Iraniwadi, Shantilal Modi Cross Road No. 2, Kandivali (West), Mumbai 400 067 both admeasuring 600 sq. ft. (carpet area), which are mortgaged in favour of India Infoline Finance Limited, shall continue until further orders.

2. Place the above Notice of Motion in normal course.”

4. The order dated 11th October 2018 in Notice of Motion (L) No. 2192 of 2018 in Suit (L) No. 1242 of 2018, is at Exhibit-C to this Court Receiver's report and the same reads as under:-

“1. By consent of Defendant Nos. 1 to 3 including the son of Defendant Nos. 2 and 3, who is present in Court, the following order is passed :

i. The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the Suit project and also the following properties :

ii. Land at village Dev, Taluka Radhapur Dist. Patan Gujarat bearing Survey No. 179 admeasuring 8272 sq.mtrs. approximately with 24 units constructed on approximately 2113.94 sq.mtrs., which is unencumbered.

iii. Land at Wai – Tukdi Satara, Tukdi Taluka, Wai, Village Yerud, admeasuring approximately 0.87 hectare, which is unencumbered.

iv. Flat No. 601 G, Ashirwad, Plot No. 14, 4th NS Road, JVPD Ville Parle (West), Mumbai 400 0056 (admeasuring 1680 sq.ft. built up area), which is unencumbered.

v. Flat No. 602 G, Ashirwad, Plot No. 14, 4th NS Road, JVPD Ville Parle (West), Mumbai 400 0056 (admeasuring 1710 sq.ft. built up area), which is unencumbered.

vi. Flat No. 5, 2nd Floor, A Wing, Viral Apartment CHSL., S.V.Road, Andheri (West), Opp. Shoppers Stop, Mumbai – 400 058 (admeasuring 785 sq.ft. built up area), which is mortgaged in favour of India Infoline Finance Limited, whose claim is in the sum of Rs.1,50,00,000/-.

vii. Flat No. 101, Nestor Court CHSL., Baji Prabhu Deshpande Road, Ville Parle (West), Mumbai – 400 056 is in the sum of Rs.1 Crore,

which is mortgaged to Kapol Coopeative Bank Limited. According to the Developer, the value of said flat is above Rs.4 Crores.

viii. Shop Nos. 1 and 2, Vinayak CHSL., Ville Parle (West), Mumbai – 400 056 aggregating area admeasuring 1200 sq.ft. carpet area, which is mortgaged in favour of Indian Infoline Finance Limited.

ix. Flat No. A-101, 1st Floor, A Wing, Gokul Vrindava, Iraniwadi, Shantilal Modi Cross Road No. 2, Kandivali (West), Mumbai – 400 067 admeasuring 600 sq.ft. carpet area, which is mortgaged in favour of India Infoline Finance Limited.

x. Flat No.A-104, 1st Floor, A Wing, Gokul Vrindavan, Iraniwadi, Shantilal Modi Cross Road No. 2, Kandivali (West), Mumbai – 400 067 admeasuring 600 sq.ft. carpet area, which is mortgaged in favour of India Infoline Finance Limited.

xi. Flat No. B-1403, 1st Floor, B Wing, Gokul Vrindavan, Iraniwadi, Shantilal Modi Cross Road No. 2, Kandivali (West), Mumbai – 400 067 admeasuring 280 sq.ft. carpet area, which is mortgaged in favour of India Infoline Finance Limited.

2. The Receiver shall take physical possession of the above properties and submit his report to this Court on 25th October, 2018.”

(emphasis supplied)

5. Mr. Mehta states that on 22nd October 2018, the Court modified the order dated 11th October 2018 and in Suit (L) No. 1242 of 2018 in which it is stated “The court receiver shall initially take symbolic possession of all these properties”. Mr. Mehta therefore, submits that the Court Receiver should take only symbolic possession and not physical possession of two flats/premises being flat/premises Nos. A-101 and A-104.

6. Mr. Mehta's interpretation of the orders is flawed. This is because in the order dated 11th October 2018 in Suit (L) No. 1242 of 2018 read with order dated 22nd October 2018 in Suit (L) No. 1357 of 2018, it is quite clear that the Court Receiver has to take symbolic possession of all the properties mentioned in order dated 11th October 2018 except flats/premises Nos. A-101 and A-104, and so far as flats/premises Nos. A-101 and A-104 are concerned, Court Receiver shall take physical possession. It does not say in order dated 22nd October 2018 in Notice of Motion No. 2384 of 2018 in Suit (L) No. 1357 of 2018, “the order passed in Notice of Motion (L) No. 2192 of 2018 in dated 11th October 2018 appointing Court Receiver in respect of flats/premises Nos. A-101 and A-104.....” as modified by order dated 22nd October 2018 in Notice of Motion No. 2384 of 2018. Therefore,

there is no question of entertaining Notice of Motion for modification of order dated 22nd October 2018 to be heard before this Court passed order in this Court Receiver's Report.

7. The fact that Defendant Nos. 1 to 3 have applied for modification of order dated 22nd October 2018 itself shows that Mr. Mehta's submissions are flawed. Defendant Nos. 1 to 3 have accepted that physical possession of these two flats/premises were ordered to be taken.

8. It is also to be noted that this notice of motion has been lodged on 9th January 2019, which happens to be the date on which the Court Receiver had fixed 2nd appointment to take physical possession of both these flats/premises.

9. Mr. Mehta states that he had moved Hon'ble Mr. Justice Kathawalla for clarification of the order dated 22nd October 2018 and Justice Mr. Kathawalla directed him to bring the advocate on that day. Mr. Mehta never went back because according to him, the said advocate refused to come before the Court. It is difficult to accept this statement of Mr. Mehta.

10. In these circumstances, the Court Receiver's report is disposed in terms of prayer clauses (a) and (b).

11. If the occupants of flats/premises Nos. A-101 and A-104 do not co-operate and handover physical possession, the Court Receiver may break open the locks and take forcible possession. The concerned police station shall depute such number of police personnel to assist the Court Receiver to implement the order of this court.

12. Defendant Nos. 1 to 3 are warned that this court will take a very serious view if they create any impediment in the court receiver taking physical possession of these two flats/premises.

(K.R. Shriram, J.)