

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 739 OF 2011**

Bluestone Properties Pvt Ltd	...Plaintiff
<i>Versus</i>	
Ramesh n Kapadia & Ors	...Defendants

Mr Zal Andhyarujina, *with Mr Akshay Patil, i/b MGS Legal, for the Plaintiff.*

Ms F Sethna, *with Mr M Siganporia & Mr A Malhotra, i/b DMD Advocate, for Defendant No. 1.*

Mr Nishith Sharma, *i/b Vijay Dhingreja, for Defendant No. 4.*

Mr NN Kapadia, *Director of the Plaintiff Co, present.*

**CORAM: G.S. PATEL, J
DATED: 23rd August 2019**

PC:-

1. Yesterday, Mr Patil then appearing for the Plaintiff, said that despite the previous orders including those of 8th August 2019 and 16th July 2019, the Plaintiff had not paid the 1st Defendant the remaining amount of Rs. 13.5 crores. He sought to venture an explanation. I did not permit this is because I had accepted the Plaintiff's statement solemnly given to the Court that payment would be made. I did so on more than one occasion. I had granted the Plaintiff repeated indulgence.

2. Having said that, I did however grant the Plaintiff yet another and this time absolutely final indulgence of time, but on conditions, and on an option now available to the aggrieved party, viz., the 1st Defendant. I gave the 1st Defendant a choice. It was his to make and his alone. The first was to extend time as requested by Mr Patil or perhaps even a little further but this was on the basis that the Plaintiff agreed and undertook not to apply for an extension; agreed that in default the Suit would stand dismissed as withdrawn; the amount of Rs. 1.5 crores paid to the 1st Defendant would be forfeited to the 1st Defendant; and the 1st Defendant would be reverted to his possession of part of the property as matters stood on the date immediately preceding the filing of this Suit. The second option was to allow an extension of time but with interest. Mr Patil at that time had instructions to request an extension of six weeks. I made it clear that I would extend time by another two weeks, eight weeks in all, provided the Plaintiff accepted these conditions as well. The 1st Defendant in Court instructed his Advocates to say that he was taking the first option and not pressing for any interest.

3. Once the 1st Defendant took this call yesterday, Mr Patil, on instructions, also accepted the other conditions attached to it. I stood the matter over to today only to enable the Plaintiff to get in to place the necessary authorisations and board resolutions to ensure that there is no latter attempt to back out of this on the ground that somebody lacked the necessary authority.

4. Mr Kapadia is a Director the Plaintiff. He is present in Court. He personally agrees and undertakes (with everything that this implies) that he will get the necessary authorisations or ratifications

from his Board of Directors and will by 30th August 2019 file an Affidavit in the Suit annexing a certified true copy of such authorisation/ratification. A copy is to be served on M/s. DMD Advocates for Defendant No. 1 on or before that date.

5. The Plaintiff will have then till 18th October 2019 to make payment of the balance amount of Rs. 13.5 crores. There will be no claim of interest provided if that payment is made on time. The Plaintiff agrees and undertakes through Mr Kapadia not to apply for any extension of time under any circumstances whatsoever.

6. If the payment is made as scheduled, the suit will stand disposed of. Since the 1st Defendant has vacated, there will, therefore, be a decree in terms of prayer clause (a) and it will be immediately marked satisfied. Drawn up Decree dispensed with.

7. Upon the Plaintiff making payment by 18th October 2019, the 1st Defendant will not make any further claim against the Plaintiff or against the shares or equity of the Plaintiff or in regard to the property in question in any forum or proceeding whatsoever.

8. Should the Plaintiff fail to make payment on or before 5.00 pm on 18th October 2019, the Plaintiff agrees that the present suit will stand dismissed as withdrawn and without a refund of court fees. In that event, the 1st Defendant will be entitled to retain the amount of Rs. 1.5 crores paid to him and the Plaintiff will have no recourse or remedy against the 1st Defendant in regard to that amount. Further, as a consequence on that dismissal the 1st

Defendant will be deemed to have been restored his possession of the suit property as it stood on 20th March 2011, the day before institution of the present suit.

9. It is clarified that the premises in question on the plot have already collapsed or been pulled down. The 1st Defendant had therefore juridical or legal possession of the property but there was no physical built structure to possess. Therefore, the question of restoration of possession necessarily means that the 1st Defendant's rights in respect of the property and being in possession of the property will have to be recognised by all authorities concerned, including the Planning and Municipal Authority in regard to all development permissions and further work at site.

10. Suit stands disposed of in these terms. Liberty to apply.

(G. S. PATEL, J)