

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO.101 OF 2019
IN
NOTICE OF MOTION NO.175 OF 2016

Prikar Properties Private Limited ..Appellant
Versus
Vimal J. Soni ..Respondent

WITH
NOTICE OF MOTION (L) NO.2939 OF 2015
IN
COMMERCIAL APPEAL NO.101 OF 2019
IN
NOTICE OF MOTION NO.175 OF 2016

Prikar Properties Private Limited ..Applicant

IN THE MATTER BETWEEN

Prikar Properties Private Limited ..Appellant
Versus
Vimal J. Soni ..Respondent

Mr. Girish Godbole a/w Mr. Anupam Surve & Mr. V. S. Vengurlekar
i/by M/s. Nair Vengurlekar, Advocates for the Appellant/Applicant.
Mr. Kunal Vajani a/w Mr. Aman Singh Brar, Mr. Shaurya Jain, Mr.
Nikheel Shukla, Mr. Sharya Baweja, Advocates for the Respondent.
Mr. D. N. Kher - Court Receiver.

CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 7th NOVEMBER, 2019

P.C.

1] Since the final direction which we would be passing is by

consent of learned counsel for the Appellant and the Respondent, a brief backdrop facts need to be noted to bring out the consent, least there may be confusion before the Learned Single Judge.

2] The Respondent is the Plaintiff and sought specific performance of a Memorandum of Understanding (“MoU”) dated 2nd May 2014. It was pleaded that the said MoU was preceded by an earlier MoU dated 8th July 2013 as per which the Defendant had agreed to sell the suit property in the manner envisages in the MoU i.e. by transferring entire shareholding of the Defendant company to the Plaintiff. Certain payments were made under the first MoU. The same was modified by the second MoU dated 2nd May 2014. As per which value of the property was reduced to ₹ 16 crores and the Plaintiff was, at the cost and expenses of the Plaintiff, to complete the suit property so that it was fit to be granted Occupancy Certificate. The works to be carried out to make the property fit for being granted Occupancy Certificate was to be borne by the Plaintiff. It was claimed that Plaintiff had completed construction and Occupancy Certificate had been applied for.

3] Cause of action accruing warranting suit to be filed was the stated facts of the representatives of the Defendant which Plaintiff claimed amounted to ouster of the Plaintiff from the possession of the suit property.

4] Notice of Motion (L) No.2121 of 2014 was taken out in

the suit which was considered by the learned Single Judge on 17th September 2014 but limited to the question whether any ad-interim injunction was warranted as prayed for.

5] Noting that the issue concerning grant of interim injunction pending disposal of the suit would require the Court to go into the issues which were noted briefly in paragraph 8 of the order dated 17th September 2014, the learned Single Judge prima-facie formed an opinion that it could not be said that the Plaintiff was in possession of the property. Whether or not Receiver should be appointed was deferred to be considered. Limited relief granted to the Plaintiff was to restrain the Defendant from transferring, selling, assigning alienating, encumbering or creating third party rights and parting with possession of the suit property.

6] The said order was challenged by both the parties in Appeal which were dismissed by a Division Bench of this Court on 29th October 2014.

7] Notice of Motion (L) No.2121 of 2014 was pending consideration before the learned Single Judge to decide after pleadings were completed whether interim relief prayed for by the Plaintiff should be granted pending disposal of the suit, when the Plaintiff filed a second Notice of Motion (L) No.2651 of 2015 pleading therein that the Defendant was causing structural alterations in the building and was removing the marble italian flooring and interior. Prayer made

was to appoint a Receiver of the suit property.

8] On 1st October 2015, the learned Single Judge passed an interim order in Notice of Motion (L) No.2651 of 2015 directing the Defendant to remove the scaffolding within the course of the day. Statement of counsel for the Defendant was recorded that the Defendant shall not put up any dividing wall or change the flooring. On 15th October 2015 another interim order was passed in the said Notice of Motion recording that in view of the material placed before the learned Single Judge, in the form of photographs, case was made out to appoint a Receiver and possession of the Defendant to be as an agent of the Receiver without payment of royalty. The Defendant was also restrained from repairing, renovating, constructing, making additions or alterations in the suit property.

9] The Notice of Motion (L) No.2651 of 2015 as also first Notice of Motion (L) No.2121 of 2014 are still pending consideration before the learned Single Judge.

10] We have noted the afore-noted facts not for the purpose of forming any prima-facie opinion or reflecting thereon for the reasons, as noted above, the Appeal is being disposed of by passing consent directions. The purpose as noted above, is to lay the backdrop for the consent i.e. to record consent in the backdrop of afore-noted facts.

11] The Appeal is disposed of on consent by setting aside the

direction in the order dated 15th October 2015 appointing a Court Receiver of the property.

12] With consent Ms. Anusha Jacob (Mobile No.9004111192) is appointed as a Local Commissioner to visit the suit property bearing No.F.P. No.666, TPS-IV, Mahim, Veer Savarkar Marg, C.S. No.2022, Mahim Division, Mumbai on 10th November 2019 at 11:00 a.m. An authorized representative of the Appellant and the Respondent or an authorized representative of the Respondent would be present at the building at 11:00 a.m. on 10th November 2019. The Respondent shall engage the services of a photographer as well as a videographer at the cost of the Respondent. Under the supervision of the learned Local Commissioner the said photographer and videographer shall make video of the entire structure ensuring that flooring, four walls and the roof of each and every room in the building is captured. Thereafter the video of the entire building showing its external fascia from all four sides would be videographed. Photographs of the interiors and the exteriors from such angles the Respondent or the Respondent's representatives would direct would be taken by the photographer. The photographer would take a print-out of the photographs and alongwith the same, on a pendrive, hand over both to the Local Commissioner. Recording of the video in original would also be handed over to the Local Commissioner. The parties or their representatives would be supplied with a copy each of the videograph and photographs by the Local Commissioner. Fee of the Local

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Commissioner is fixed at ₹ 1,00,000/- (One Lac) and shall be borne equally by the Appellant and the Respondent.

13] The report of the Local Commissioner shall be filed in the suit.

14] Before bringing curtains down, we would request the learned Single Judge to try and expeditiously of the two pending Notice of Motions filed in the suit being Notice of Motion (L) No.2121 of 2014 and Notice of Motion (L) No.2651 of 2015.

15] In view of the disposal of Appeal, Notice of Motion (L) No.2939 of 2015 does not survive and is accordingly disposed of.

**Balaji G.
Panchal**

Digitally signed by
Balaji G. Panchal
Date: 2019.11.08
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SMT. BHARATI DANGRE, J

CHIEF JUSTICE