

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

Civil Application No.29/2019
in
Family Court Appeal No.73/2016

Slum Rehabilitation Authority Applicant

Vs.

Mrs. Manali Mohan Gujar & Anr. Respondents

Mr. Vijay D. Patil for the Applicant
Mr. Anil Mane for Respondent No.1.
Mr. S. R. Singh for Respondent No.2

**CORAM: K.K.TATED &
SARANG V. KOTWAL,JJ.**

DATED : FEBRUARY 28, 2020

P.C.

1 Heard. This Application is filed by the Slum Rehabilitation Authority i.e. third party to recall clause 4 of the Consent Terms dated 12.04.2018 filed by the original Appellant and the Respondents - i.e. Respondent Nos.1 and 2 in the present Civil Application.

2 The learned counsel for the Applicant submits that there was a family dispute between Respondent Nos.1 and 2. Hence, they filed the Family Court Appeal No.73/2016, which was settled. While settlement, they made clause 1(D) in the Consent Terms directing the Slum Rehabilitation Authority to handover the possession of the flat bearing

No.406 situated at Shri Sai Dham Coop. Housing Society Ltd., N.S.Phalke Marg, Sai Wadi, Andheri (East), Mumbai - 400069 and handover the necessary documents, keys as well as physical possession to Respondent No.1 Manali Mohan Gujar. Clause 1(D) of the Consent Terms, read thus:

“(D) As per the above said Consent Terms by both the parties the Appellant and the Respondent seeking directions from the Hon’ble Court to give directions to the concern authority of SRA, Mumbai to open the seal of the said flat bearing No. No.406 situated at Shri Sai Dham Coop. Housing Society Ltd., N.S.Phalke Marg, Sai Wadi, Andheri (East), Mumbai - 400069 and handover the necessary documents, keys as well as physical possession to the Appellant within the period of 2 months.”

3 The learned counsel for the Applicant submits that as per their contention, neither Respondent No.1 nor Respondent No.2 is entitled to the said flat and to that effect they have already passed the order and communicated to the parties. He submits that these facts were suppressed by the parties before this court. Hence, the present Civil Application for modification of the Consent Terms dated 12.04.2018. He submits that the Applicant is not interested with other terms of the Consent Terms, as it is a family dispute between Respondent Nos.1 and 2.

4 The learned counsel for Respondent Nos.1 and 2 tendered their affidavit-cum-undertaking. Both the counsel submit that Respondent Nos.1 and 2 are present in court. They entered into witness box and admitted the contents of the affidavit-cum-undertaking. Same is taken on record. On

the basis of the undertaking filed by Respondent No.1 and 2 they submit that they have no objection to delete clause 1(D) of the Consent Terms dated 12.04.2018. They submit that, they shall not claim any right, title and interest in respect of the said flat as stated in clause 1(D).

5 Hence, by consent of the parties, i.e. the Applicant and Respondent Nos.1 and 2 – husband and wife, following order is passed:

a. Clause 1(D) of the Consent Terms dated 12.04.2018 filed in the Family Court Appeal No.73/2016 stands deleted.

b. Clause 1(D) of the consent Terms shall read thus:

“(D) As per the above said Consent Terms by both the parties the Appellant and the Respondent seeking directions from the Hon’ble Court to give directions to the concern authority of SRA, Mumbai to open the seal of the said flat bearing No. No.406 situated at Shri Sai Dham Coop. Housing Society Ltd., N.S.Phalke Marg, Sai Wadi, Andheri (East), Mumbai – 400069 and handover the necessary documents, keys as well as physical possession to the Appellant within the period of 2 months.”

c. Remaining Consent Terms read thus:

CONSENT TERMS:

The Appellant and the Respondent above named most respectfully state and submit as under;

1. Both the parties i.e. Appellant and the Respondent above named arrived at compromise in the matter on the following terms and conditions:-

A) *The Respondent is ready and willing to execute the registered gift deed at the office of the Sub/ Joint Registrar of concern area in respect of the flat No. 407 situated at Shri Sai Dham Co. Op. Hsg. Society Ltd., N. S. Phalke Marg, Sai Wadi, Andheri(East), Mumbai :- 400069 in the name of the Appellant before deciding appeal pending before Hon'ble High Court, Bombay.*

B) *The Respondent is ready and willing to execute the registered gift deed at the office of the Sub/ Joint Registrar of concern area in respect of the Shop No.2G, Building No.A-11, Om Sai Ram SRA Co. Op. Hsg. Society Ltd., N. S. Phalke Marg, Sai Wadi, Andheri(East), Mumbai :- 400 069 in the name of the Appellant before deciding appeal pending before Hon'bie High Court, Bombay. The Appellant will bear the stamp duty charges in respect of the same shop.*

C) *The Appellant is ready and willing to execute notarized power of attorney in favour of Respondent for transfer, sell or mortgage and signing any documents in respect of flat No. 406 situated at Shri Sai Dham Co. Op. Hsg. Society Ltd., N. S. Phalke Marg, Sai. Wadi, Andheri(East), Mumbai:-400069 in the name of the Respondent wherein also surrendering her right, title and interest in the above said flat.*

D) *That both parties are hereby agreed that they will not claim their right, title, interest in respect of each others property whatsoever past, present or in future.*

E) *That both the parties agreed that they will not visit each others native place home and create obstruct or havoc.*

F) *That both the parties undertakes to not to file any civil or criminal cases against each other in any court of law.*

G) *That the Appellant shall handover all the original LIC policies stands in her name as well as in the name of their two sons to the Respondents and the Respondent is entitled to withdraw the amount*

against the said LIC policies for his own use for which the sons shall, co-operate with the Respondent if their signature is required for redeeming the said LIC policies.

H) That both the parties have signed this consent terms with their free will and without any coercion, fraud or undue influence upon them.

2) This consent terms have been read over to both the parties in Marathi and after understanding the same they have put the signature.

d. Directions given by this court in order dated 12.04.2018 in clause 4 is recalled. Clause 4 reads thus:

“(4) It is directed that the concerned authority of S.R.A.Mumbai shall act as per clause (d) of the Consent Terms on payment of usual charges, if any, within the time stipulated in the Consent Terms.”

e. The Civil Application stands disposed of accordingly.

f. No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)