IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER REPORT NO.14 OF 2020/D-Group
in
SUIT NO.1512 OF 2009

Shapoorji Pallonji & Co.Ltd. … Plaintiff
v**/s.**
Jignesh Shah & Ors. **…** Defendants

Mr.Janak Dwarkadas, Senior Advocate with Mr.Arif Doctor, Ms.Sonam Mhatre, Mr.Tejjas P.Shah i/b. Dhaval Vussonji & Associates,, for the Plaintiff.

Mr.Khandeparkar with Mr.Rashmin Khandekar & Minal Chandnani, for Respndent nos.1 to 5.

Mr.N.A.Bandodkar, Iind Asstt. To Court Master present.

CORAM : G.S. KULKARNI, J.

DATE : 5 March 2020

P. C.

Heard Mr.Dwarkadas, learned Senior Counsel for the plaintiff and Mr.Khandeparkar, learned Counsel for the defendants. Prayers in the Court Receivers' report are as under:-

> "(a) The plaintiff may be directed to take appropriate application for the direction of disbursing the amount of Rs.11,29,69,006.80 lying with the Court Receiver in the separate suit account as deposited by the purchasers of the flats sold by Cresent Builder-Defendant.
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> OR
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> (b) Direction be given to the Court Receiver to pay Rs.11,29,69,006.80 to the plaintiff as per request made in letter dated 27/11/2019, 12/12/2019 and 02/01/2020.
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> (c) The cost of report may be awarded in the sum of Rs.3000/- (Rupees three thousand only) from amount lying in suit account."

2. Mr.Dwarkadas, learned Senior Counsel for the plaintiff drawing my attention to the decree which is in terms of the Minutes of the Order filed in Appeal (lodg) no.289 of 2013 (alongwith the connected appeals) would submit that the amount which is now realised from the sale of the flats/tenements the details of which are set out at page 53 of the report, are entitled to the plaintiff as per clause 6(d) and 7 of the consent decree. He has also drawn my attention to the order dated 23 March 2018 passed by this Court (G.S.Patel, J.) on Notice of Motion no.89 of 2018 to contend that even in this order the Court has observed that the decree in question is a money decree and the role of the Court Receiver as agreed between the parties was to facilitate timely completion of the project and the necessary sales of flats, to ensure payment of the decreetal amounts to the plaintiffs. It is contended that the Court also observed that the construction to be done by the plaintiff, was entirely irrelevant and must be delinked from the sales of the flats, as these sales were not on behalf of the plaintiff from any legally tenable perspective. In paragraph (3) of the said order the Court made the following observations:-

> "3. The Consent Terms were concerned only with the Project and no other. Further, the sale of the flats was not in pursuance of any original agreement to which the suit related but only with the arrangement conceived under the Consent Decree. The flat sales were, thus, required in payment of the decretal debt owed by Defendants Nos. 1 to 5 to the Plaintiff; and to achieve these sales, the Project had to be taken to be completion (i.e., the flats to be sold were required to be built). The Court Receiver's role was therefore to facilitate the timely completion of the Project and the necessary sales of flats to ensure payment of the decretal debt. The fact that the construction was to be done by the Plaintiff is entirely irrelevant and must be delinked from the flat sales, for these sales were not 'on behalf of the Plaintiff' from any legally tenable perspective. To put it another way: if the judgment debtors simply paid off the decretal debt due to the Plaintiff, the decree holder, no question would ever have

> arisen of Project completion or flat sales with or without the Receiver. The Receiver, it must be noted, was appointed in execution, and that execution was of a money decree. It is, therefore, not possible to accept the submission that the 'seller' or 'deemed seller' of any of the flats is the Plaintiff, or that the Receiver sold any flats 'on behalf of the Plaintiff'.

3. Mr.Dwarkadas, learned Senior Counsel has also referred to paragraphs 17 and 18(a) of the said order to contend that the sales which are being effected by the Court Receiver are on behalf of the judgment debtors. Mr.Dwarkadas would also submit that as directed by this Court in paragraph 18(c) of the said order the amounts received from sale of 11 flats are now as deposited with the Court Receiver and is subject matter of the present report be permitted to be withdrawn by the plaintiff.

4. Mr.Khandeparkar, learned Counsel for the defendants on the other hand in contesting the contention as urged by Mr.Dwarkadas would submit that the plaintiff's reading of the decree to make a claim on the amount subject matter of this report, is not correct. He would submits that firstly these are not the amounts which are realized from any sales undertaken by the Court Receiver. He submits that these are sales which preceded the decree which were sales effected by the defendants/judgment debtors and which cannot fall in the category of any sales to fall under Clause 6 (d) of the consent terms. Mr.Khandeparkar would submit that the only entitlement of the plaintiff and as clearly agreed in the context of execution of the decree as provided for in clause 7 of the consent terms, which is two fold. Firstly to realise the amount from the area admeasuirng 52000 sq.ft. which according to him is already sold. Secondly to realize the amount from the sale of 12200 sq.ft which was the area of sales as effected by the judgment

debtors and in respect of which the judgment debtors have already taken steps to cancel the sale agreements so as to make premises/area available in favour of the plaintiffs in case the 52000 sq.ft area falls insufficient to realize the decreetal dues. His contention is that unless as agreed between the parties this area of 12200 sq. ft. fails to realize the decreetal amounts, the plaintiffs cannot have any entitlement to withdraw the amount which are realisations from the premises which were independently sold by the defendants prior to the consent decree. In support of his contention that once a procedure in execution is agreed between the parties, no other procedure can be resorted and any procedure *de hors* the procedure agreed between the parties, cannot be accepted by the Court, in execution of a money decree as in the present case. In support of this contention Mr.Khandeparkar has placed reliance on the judgment of the Supreme Court in "***Radhey Shyam Gupta Vs. Punjab Natinoal Bank & Anr.***"[1]

5. Having heard Mr.Dwarkadas, learned Senior Counsel for the plaintiff and Mr.Khandeparkar, learned Counsel for the defendants, it appears to be not in dispute that the amount in question has been deposited by those purchasers to whom the flats/tenements were sold by the defendants/judgment debtors, prior to the consent decree in question. It clearly appears that these are not sales undertaken by the Court Receiver. It is also quite clear that these are not the flats or tenements which are sold either under 52000 sq.ft or additional area of 12200 sq.ft as specifically agreed between the parties, for the decreetal amount to be realized as set out in Clause 7 of the consent terms. This being the case I am in agreement

1 AIR 2009 SC 930

with the contention as urged by Mr.Khandeparkar that if the prayer of the plaintiff to withdraw the amount is granted, the executing Court would be acting outside the decree what has been agreed between the parties in clauses 6 and 7 of the consent decree. In this context Mr.Khandeparkar reliance on the decision of the Supreme Court is quite apposite. The Supreme Court taking a review of the legal position in the context of execution of a money decree observed that once the parties have agreed for the procedure in execution in regard to recovery of the amounts, the Court cannot go beyond such procedure. In paragraphs 24 and 25 the Supreme Court has observed thus:-

> "24. Having considered the submissions made on behalf of the respective parties, we are inclined to accept Mr. Mehta's submission that the order impugned in the revision petition before the High Court did not attract the bar of the proviso to sub-section (1) of Section 115 of the Code as it sought to finally decide the manner in which the decree passed in Suit No.66 of 1992 by the learned Additional and Sessions Judge, Bayana, Rajasthan, was to be satisfied. However, we are also of the view that having regard to proviso (g) to Section 60 (1) of the Code, the High court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in the Jyoti Chit Fund case (supra)has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60(1) of the Code.
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> 25. We also agree with Ms. Shobha that the High Court could not have gone behind the decree in the execution proceedings and the alteration in the manner of recovery of the decretal amount was erroneous and cannot be sustained. We also agree with Ms. Shobha that even after the retiral benefits, such as

> pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60(1) of the Code. Except for the decision in the Jyoti Chit Fund and Finance case (supra), where a contrary view was taken, the consistent view taken thereafter support the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retiral benefits paid to the appellant." (emphasis supplied)

6. It needs to be observed that the decree in question is a money decree and despite sale of 52000 sq.ft. area, the decreetal amount has remained to be satisfied which not only included the amount of Rs.107 crores payable to the plaintiffs but also cost of the construction and the capitalised value which were paid to the Municipal Corporation of Greater Mumbai. Admittedly as agreed between the parties in the consent decree, the decreetal amount is not to fetch any interest. It is also quite clear that the area of 12200 sq.ft. is still available to the plaintiffs to be sold and before the amounts are realized from the sale of this area, for which the Court Receiver is already in process of taking further steps. In these circumstances, in my opinion, it may not be possible to grant the prayers of the plaintiff to withdraw the amount which is subject matter of this report.

7. In the facts of the case, it would be appropriate that the amount of Rs.11,29,69,006.80 remains deposited with the Court Receiver which be dealt as per further orders which would be passed in the proceedings.

8. Court Receivers Report is accordingly disposed of. Cost of the Court Receiver's report quantified at Rs.3000/- be paid by the plaintiff within one week from today.

Prashant V. Rane Digitally signed by Prashant V. Rane Date: 2020.03.06 18:35:30 +0530

[G.S. KULKARNI, J.]