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

**IN ITS COMMERCIAL DIVISION
CONTEMPT PETITION NO. 132 OF 2019**

IN

COMM ARBITRATION PETITION NO. 1072 OF 2019

AND

COMM ARBITRATION PETITION NO. 1072 OF 2019

SBI Staff Dream Coop Hsg Soc Ltd

...Petitioner

Versus

Surya-Landmark Developers Pvt Ltd

...Respondent

WITH

INTERIM APPLICATION NO. 1 OF 2020

IN

CONTEMPT PETITION NO. 132 OF 2019

IN

COMM ARBITRATION PETITION NO. 1072 OF 2019

Kiran Kulkarni, son of Gopinath Kulkarni

...Intervener

In the matter between

SBI Staff Dream Coop Hsg Soc Ltd

...Petitioner

Versus

Surya-Landmark Developers Pvt Ltd

...Respondent

Mr Amogh A Singh, with Abhishek S Mishra & N More, i/b Bhavin R Bhatia, for the Petitioner.

Mr S Samantaray, i/b Deep Chheda, for the Respondent.

Mr Digajmaan Mishra, with Yashmaan Mishra, i/b Mangesh Bhende, for the Intervener in the IA.

CORAM: G.S. PATEL, J.
DATED: 6th March 2020

PC:-

INTERIM APPLICATION NO. 1 OF 2020:

1. Not on board. Mentioned. Taken on board.
2. This is an Interim Application filed by one Kiran Kulkarni, represented by Mr Mishra. Kulkarni is the son of one Gopinath Kulkarni, a deceased member of the Petitioner society.
3. The intervention application is thoroughly misconceived. There is no question of the Applicant/Intervenor joining in these proceedings. Any rights that the deceased Gopinath Kulkarni had will pass on to his heirs by operation of law. That will not make Gopinath Kulkarni's heirs either necessary or even proper parties to a dispute about the Development Agreement between the society and the developer.
4. In fact it appears that there is a dispute in regard to Flat No. D-9 in the Petitioner society. This dispute is pending in the City Civil Court at Dindoshi. Kiran Kulkarni claims an entitlement from

one Shubhada Mahadik. The dispute in the City Civil Court at Dindoshi is by one Darshana Dalvi against one Gauri Kulkarni (since deceased) and Shubhada Mahadik. Obviously, this Arbitration Petition is in no way concerned with these proceedings. All contentions in the proceedings pending before the City Civil Court at Dindoshi will remain unaffected by any decision in this matter.

5. The Interim Application is dismissed. No costs.

CONTEMPT PETITION NO. 132 OF 2019:

6. Several orders have been made in the Contempt Petition with a view to find mutually satisfactory solution. The last of these, on 26th February 2020, required the 1st Respondent developer to pay an amount of Rs. 20 lakhs by 29th February 2020 by RTGS. The Petitioner confirmed that the society has received this amount on schedule.

7. The difficulties are now two-fold. The first is that there is no dispute that the Respondents have not been able to pay any of the arrears. There is no dispute that they are in breach of their undertakings in the order dated 2nd November 2018.

8. Making an order in contempt, i.e. by sentencing the Respondents to jail and imposing a fine, may serve to convey the sanctity of orders of this court and of undertakings given to it, but that is all that such an order will achieve. That purpose has been achieved already, at least to some extent. For the Petitioners, such

an order is pyrrhic. There may be some moral satisfaction, but it does nothing to aid them in their quest to get redeveloped homes.

9. There is a possible argument that this being quasi criminal proceedings, the Court has no option but either to make an order of eviction and fine or to dismiss the Contempt Petition and can do nothing else. But having regard to the facts and circumstances of the case, that seems to me to be wholly inadvisable way of going forward. As I said, there is absolutely no manner of doubt in mind that there is in fact contempt committed by Respondents Nos. 2 and 3 of the 2nd November 2018 order (and which I have previously extracted and noted):

“1. Mr Murari Shah, Director of Respondent who is present in Court undertakes for himself and on behalf of the Respondent Company as follows:

(i) The Respondent shall clear the arrears of compensation in lieu of temporary alternate accommodation in the following manner:

(a) on or before 20th November 2018, Respondent No.1 developer shall pay the net compensation payable in the current month along with arrears of one month i.e. April, 2018;

(b) on or before 20th December, 2018 Respondent No.1 developer shall pay the compensation payable in the current month along with arrears of one month i.e. May 2018 and so on.

- (c) Upon the entire arrears being cleared, the Respondent No.1 developer shall continue to pay the monthly compensation towards the temporary alternate accommodation on or before 20th day of each month until occupation certificate is obtained and the original occupants/members are put in possession of their new flats.
- (ii) Respondent No.1 shall submit a Bank Guarantee of Rs.1 Crore in terms of the Development Agreement read with the Supplementary Agreement on or before 17th December 2018 and shall not create third party rights in respect of Flat No.b/302 till the occupation certificate is granted.
- (iii) Respondent No.1 shall submit a Bar Chart on Affidavit within three weeks from the date hereof showing the manner of completion of the project till 31st December 2021.
- (iv) Respondent will clear the outstanding property tax by 31st January 2018.
- (v) The above undertakings are accepted.
- (vi) Stand over to 27th November 2018 'for Compliance'."

10. Contempt is alleged because the arrears are not cleared. With the Rs. 20 lakh payment mentioned above, the accumulated arrears now roughly comes to Rs. 1.80 crores and there is also some amount due towards property tax which the Respondent has agreed to clear.

11. What is to be noted is that 2nd November 2018 order contains a specific undertaking by Murari Shah, Respondent No. 2, for himself and on behalf of the Respondent No. 1 company. There is an admitted failure to comply with that undertaking and thus the act of contempt is complete.

12. By the order of 15th December 2019, I issued a contempt notice. Then by my order of 24th February 2020 I took into custody the passports of Respondent No. 2, Murari Vipul Shah, and Respondent No. 3, Vipul Himmatlal Shah. I also restrained them from leaving the city without permission of this Court.

13. Having arrived at this finding that there is in fact contempt, I do not believe I can continue to hold the passports or continue with the injunction or restrain against them from leaving the city without permission of this Court. The passports will now be returned to them and the restraint from leaving the city without notice also stand recalled.

14. The question remains as to what is the order to be made on the Contempt Petition. In paragraph 5 of my order of 26th February 2020, I said this:

“5. I am, however, making it clear that a failure to transfer this amount of Rs. 20 lakhs on or before 29th February 2020 will not only constitute contempt or aggravated contempt (and there is a statement in paragraph 3 by these two Respondents that they accept that this will be an act of contempt), but a necessary consequence will be that the Respondents will not then be able to impugn or

dispute the Petitioner's termination of the Development Agreement. The reason is self-evident. The Respondents cannot possibly be in breach of their obligations, in contempt of court and yet claim a continuance of their rights under the Development Agreement."

15. Now while this was in the context of payment of Rs. 20 lakhs and failure to comply would constitute contempt or aggravated contempt, I see no reason why the Development Agreement should not be terminated as a necessary consequence as an alternative to a jail sentence and fine being imposed immediately.

16. Mr Samantaray on instructions from Mr Murari Shah, who is present in Court, therefore, accepts the termination by the society of the Development Agreement. Consequently, paragraph 8 of the 26th February 2020 order by which the society was not to act in furtherance of this termination will no longer continue.

17. I must note before parting with this matter that Mr Samantaray had put forward the following alternative proposals:

- (a) That the project should be converted into a modification or some variation of a Slum Rehabilitation Area Scheme under Development Control Regulation 33(11). The society rejected this explicitly.
- (b) Alternatively, that the existing projected be modified to permit commercial premises on the ground floor to fund not only the arrears of rent but completion of the construction. To this the society insisted that there should not be at any time a restaurant or a hospital /

nursing home in those commercial premises. Although Mr Samantaray has instructions to state that his clients will 'ensure' this, I do not see how they can without being subjected to further contempt action. They might, for instance, put a genuine vendor of shoes or utensils or a general provision merchant into possession of a shop, but they certainly have no control over what that shop owner does with the premises once having acquired title. The society does not want the attendant nuisance, crowd or noise of having a busy restaurant or a nursing/medical facility in this residential building. It is for this reason that the proposal has been rejected.

There is, therefore, no viable alternative at all.

18. Mr Singh states that the society will now take steps as it may decide in its General Body or through the managing committee either for self-redevelopment (as has been recently successful done elsewhere in the city) or will identify another builder.

19. The one plus point to this inaction by the Respondent is that there is absolutely nothing on site. The only structure is a site office. That site office may be removed by the society at its own cost. It will ensure that the site office material and all equipment within it is properly safeguarded so that the Respondent may collect it at any time after advance written notice to the Advocate for the Society.

20. So far as the claim of the society for arrears is concerned, all contentions are left open. The society is at liberty to file its own

substantive application under Section 11 of the Arbitration and Conciliation Act 1996 for appointment of an Arbitrator and to pursue its claim in arbitration.

21. The Contempt Petition is disposed of in these terms.

(G. S. PATEL, J)