

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

**NOTICE OF MOTION NO. 2038 OF 2019
IN
NOTICE OF MOTION NO. 1606 OF 2017**

**WITH
APPEAL NO. 30 OF 2020
IN
NOTICE OF MOTION NO. 2038 OF 2019**

**WITH
NOTICE OF MOTION NO. 1606 OF 2017
IN
SUIT NO. 497 OF 2017**

Edna Maben & Ors. ... Applicants/Orig.
Plaintiffs

Versus

Avarsekar & Sons Private Limited & Ors. ... Defendants

Mr. Sharan Jagtiani, Senior Advocate a/w Ravi Gadagkar, Ms. Trupti Shetty, Samruddhi Sonar i/b Dhruve Liladhar & Co. for the Plaintiffs.
Mr. Sanjiv Punalekar a/w Mr. Sachin Kanse for Defendant No.1.

CORAM : R.I. CHAGLA, J.

DATED : 18th JULY, 2022.

ORDER :

1 Heard the learned Counsel for the parties. By this Notice of Motion the Applicants/Plaintiffs have pending the hearing and final

disposal of the Notice of Motion, sought modification of order dated 05.05.2017 passed by this Court to the extent that a neutral person/Administrator/Officer of this Court be appointed on the Ad-hoc Committee with powers to participate, vote and such further powers as may be deemed fit by this Court in the Ad-hoc Committee. Notice of Motion was filed on 13.08.2019.

2 By the order of this Court dated 05.05.2017 the Ad-hoc Committee had been appointed to maintain, manage and administer Pushpanjali Apartments, Old Prabhadevi Road, Prabhadevi, Mumbai 400 025, ("the suit building") comprising of six members. In the Ad-hoc Committee, three members were to be nominated by the Plaintiffs and three members were to be nominated by Defendant No.1. The particulars of the members on the Ad-hoc Committee have been mentioned in clause (i) of the said order dated 05.05.2017. Defendant No.1 had made a statement that it shall render all necessary cooperation. If any difficulty arose, parties were granted liberty to apply before this Court. The said Ad-hoc Committee was to open a bank account, collect maintenance charges from occupiers of the suit building and deposit these moneys into the bank account in the name of Pushpanjali Building Ad-hoc Committee and the bank account was to be operated by two individuals, each nominated from the group mentioned in the said order. They shall be the

authorized signatories for the purpose of operation of the bank account. The directions were issued with regard to non creation any third party rights in respect of the common areas of the suit building. The pleadings were directed to be completed in the Notice of Motion.

3 After the passing of the order dated 05.05.2017, the members of the Ad-hoc Committee have undergone change. However, it has been admitted by the parties to the proceedings that there still appears to be deadlock and the Ad-hoc Committee has not been able to resolve the same.

4 By the subsequent order passed by this Court dated 23.03.2022, this Court had noted the submissions of Mr. Sharan Jagtiani, learned Senior Counsel for the Plaintiffs, and Mr. Madhur Rai, learned Counsel for Defendant Nos.1 and 2 with regard to the issues that still remained to be resolved and which had resulted in a deadlock as there was an equal representation of nominees of the Plaintiffs and Defendant No.1 on the Ad-hoc Committee. Reference is also made to subsequent order dated 11.06.2018 by which Mr. Kapse, Additional Prothonotary and Senior Master of this Court, was appointed to call a meeting between the parties on 18.06.2018 to resolve the differences between the parties. Thereafter, several meetings have been called by Mr. Kapse which has

been recorded in affidavit in support of the Notice of Motion. The several issues remaining to be resolved between the parties have been highlighted in paragraph 2 of the said order dated 23.03.2022 and which is also referred to in paragraphs 29 to 36 of the affidavit in support of the Notice of Motion.

5 Mr. Jagtiani had on 23.03.2022 made an application for neutral person/Administrator/ Officer of this Court to be appointed on the Ad-hoc Committee with powers to participate, vote and exercise such powers as may be deemed fit by this Court in the Ad-hoc Committee, in order to resolve several issues between the parties. This was opposed by Mr. Madhur Rai on behalf of Defendant Nos.1 and 2.

6 Another suggestion of Mr. Jagtiani was to appoint a Commissioner for calling a meeting of Ad-hoc committee, once again trying to resolve the pending issues between the parties. This Court had accordingly appointed the Commissioner Mr. Trivedi, the then Official Assignee of this Court as Commissioner for calling the meeting of the Ad-hoc Committee for the Plaintiff and Defendant Nos.1 and 2 to discuss the issues which were still to be resolved between the parties and which have been highlighted in the said order as well as in the aforementioned paragraph of the Notice of Motion. Subject to the outcome of the

meeting, the relief sought for in the Notice of Motion viz. to appoint neutral person/Administrator/ Officer of this Court to be given powers to participate, vote in the ad-hoc Committee in order to resolve such issues would be considered. The meeting was to be held on 06.04.2022 at 5.30 p.m. Subsequent to the meeting held, Mr. Trivedi Commissioner appointed by this Court has placed minutes of meeting of the Ad-hoc Committee as well as his observations in a compliance report filed before this Court.

7 Mr. Jagtiani as well as Mr. Sanjiv Punalekar have both agreed that there does appear to be a deadlock in the Ad-hoc Committee as the issues between the parties still remain to be resolved. This is also borne out from the compliance report filed by Mr. Trivedi which is dated 13.04.2022. In paragraph 45 of the compliance report it is in fact reported to this Court that the grievance of the Plaintiffs Ad-hoc Committee members as also the grievance of the Defendants Ad-hoc Committee members were sought to be resolved but the desired results could not be achieved since there was deadlock amongst the members.

8 Mr. Jagtiani as well as Mr. Sanjiv Punalekar are agreeable for relief sought for in prayer clause (a) of the Notice of Motion No.2038 of 2019 being granted and to appoint such neutral person on the Ad-hoc

Committee with powers to participate, vote and exercise such powers as may be deemed fit by this Court in the Ad-hoc committee meetings. It is clarified that appointment of such neutral person and conferring powers to participate, vote and such other powers in the Ad-hoc Committee meetings will be without purchase to the rights and contentions of the parties. In view of the agreement arrived at for appointment of neutral person on the Ad-hoc Committee, the following order is passed :

- i) Mr. Shanay Shah, Advocate of this Court is appointed as such neutral person on the Ad-hoc Committee which had been constituted by this Court on 05.05.2017 to participate, vote at the meetings held by the Ad-hoc Committee and make a record of minutes of such meetings which shall then form part of compilation to be placed before this Court.
- ii) Mr. Shanay Shah is at liberty to seek the advice of an expert who may be a Chartered Accountant or Engineer, Architect etc. as he deems fit.
- iii) The appointment of Mr. Shanay Shah, Advocate of this Court shall be initially for a period of one year from the date of this order.

iv) The Advocate for the Plaintiff as well as Defendant Nos.1 and 2 shall jointly serve this order on Mr. Shanay Shah and seek his consent to the appointment as neutral person on the Ad-hoc Committee.

v) The cost and charges of Mr. Shanay Shah shall be borne equally by the Plaintiffs and Defendant Nos.1 and 2.

vi) Liberty is granted to the parties to apply if there is any difficulty.

vii) Notice of Motion No.2038 of 2019 is disposed of in the above terms.

viii) The Notice of Motion shall be placed for compliance on 01.08.2022, High on Board.

9 At this stage, Mr. Jagtiani points out to this Court that in the event Mr. Trivedi who was appointed as Commissioner for calling Ad-hoc Committee meeting, has any pending charges which are required to be settled, they may be communicated with supporting account for such charges, in order that for it to be settled by the parties.

10 Accordingly, Mr. Trivedi is directed to furnish particulars of any pending charges payable to him in order for the parties to clear the pending charges. In the event of communication of any pending charges with supporting account of the same, the charges, if any, shall be cleared by the parties within a period of two weeks from today.

(R.I. CHAGLA, J.)

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
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