Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 999 OF 2023

Radha Arakkal & Anr …Petitioners

Versus

Maharashtra Real Estate Appellate Tribunal & Ors …Respondents

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Mr Aseem Naphade, *i/b Chaitra Rao, for the Petitioner.*
Mr SB Gore, AGP, *for Respondent No. 2-State.*
Mr Rahul R Tiwari, *with Vikas Chauhan, i/b Nidhi Chedha, for Respondent No. 3.*

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 17th July 2023

AMOL PREMNATH JADHAV

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PC:-

1. Rule. Returnable forthwith, because the impugned order is on the face of unsustainable.

2. The only application made by the Petitioners was for leave to withdraw amounts deposited in the MahaRERA or the Appellate Tribunal. The Petitioners sought this withdrawal towards recovery of their dues and for which the Petitioners had an adjudicated claim sustained all the way to the Supreme Court. About these facts there is not dispute at all. The total amount deposited was Rs. 88,83,769/-

by 16th October 2019. There were at least two rounds of first and second appeals and a Special Leave Petition in 2022 came to be dismissed.

3. It began with the complaint of the Petitioners as allottees of Flat no. 203 in the 3rd Responder's project Sai Sapphire. The Petitioners sought a refund of the booking amount. That complaint was allowed as long ago as 11th April 2018. All the appeals and deposits have followed since.

4. By the impugned order dated 19th October 2022, and this was after the Petitioners had obtained orders from the High Court, when the Petitioners sought leave to withdraw the amount deposited in the Tribunal, the tribunal said that the application for withdrawal was "unsustainable" and therefore, the Petitioners had to approach the authority (MahaRERA) for seeking recovery of the deposited amount.

5. We are unable to understand this order. The application was not for recovery. The application was for withdrawal of an amount that was already lying in the Tribunal. If that did not fully satisfy the amount decreed or directed, there would a partial satisfaction, but that is all. Recovery would be for the rest. When an amount is deposited in a Court or with a Tribunal, it is never necessary for 'execution' to be initiated for withdrawal. There is no question of attaching or proceeding in execution against deposits made in Court or before a Tribunal. These deposits are always held to the credit of the subject proceedings.

6. In our view, the Tribunal was entirely wrong in disallowing the application and directing recovery proceedings in execution. That recovery could proceed for any balance amount over and above the amount deposited.

7. Rule is accordingly made absolute in terms of prayer clause (a) and (b) which read thus:

> "(a) Issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order of direction under Article 226 of the Constitution of India quashing the impugned order dated 19.10.2022 being an Exhibit a hereto passed by Respondent No. 1;
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> (b) Issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order of direction under Article 226 of the Constitution of India directing the Respondent no. 1 to release the amount of Rs. 88,83,769/- deposited by Respondent No. 3 along with accrued interest, if any, to the Petitioners."

8. It is clarified that the amount to be returned to the Petitioners is to be the amount deposited with all accrued interest.

(Neela Gokhale, J) **(G. S. Patel, J)**