

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO.101 OF 2022

Habib Nadiadwala and Ors.] .. Applicant

vs.

Next Constructions & Ors.] .. Respondents

ALONGWITH

INTERIM APPLICATION NO.4312 OF 2022

AND

INTERIM APPLICATION NO.4309 OF 2022

AND

INTERIM APPLICATION NO.4153 OF 2022

AND

INTERIM APPLICATION NO.4058 OF 2022

IN

ARBITRATION APPLICATION NO.101 OF 2022

Mr.Y.R. Shah, for the Petitioner.

Mr.Shoaib Memon a/w Ibrahim Memon for Respondent No.2.

Mr.Vishal Kanade i/b Prakash Purohit for Applicant/Intervenor.

CORAM : BHARATI DANGRE, J

DATE : 19th JANUARY, 2023.

P.C.

1] In the order dated 16.01.2023, I had taken cognizance of the Consent Terms signed by the ten Applicants in occupation of 9 units and three Respondents, Respondent Nos.2 and 3 being the partners of Respondent No.1.

By the said Consent Terms, a consensus was arrived between the tenants of the premises which is under redevelopment and they had put their disputes to rest. The terms were marked as 'X' for identification.

2] While the Arbitration Application was being heard, it was noticed that there are four Interim Applications filed by four unit holders i.e. three residential units-holders and one commercial unit-holder. Mr. Kanade representing three of them and Mr. Manish Jagani, one of the Applicant present in the Court, who is also afforded an opportunity of hearing, categorically state that they would be satisfied if the Consent Terms which are entered into with other tenants i.e. Applicants before the Court, are evenly extended to them, since they cannot be put to a disadvantageous position, merely because they are not parties to the Application.

3] In furtherance thereof, Respondent Nos.2 and 3 under their signature have put on record an Undertaking dated 17.01.2023 and time was sought on behalf of the learned Counsel Mr.Vishal Kanade and Mr.Manish Jagani, to peruse the Consent Terms and make appropriate statement.

4] Today, on going through the Undertaking and the Consent Terms, they have accepted the Undertaking/Affidavit subject to some modifications which I will set out in the subsequent paragraphs.

The three Intervenor out of four, who have filed Interim Applications, categorically admit of entering into an addendum agreement, except Mr.Popatlal Gada, who is holding commercial unit, in whose case though an addendum was prepared, it is not signed.

5] Respondent Nos.2 and 3 in their Affidavit -cum- Undertaking have specifically stated as under :

“6] We further undertake to register the Addendum to the Agreement for Providing Permanent Alternate for the said Mr.Milind Jayant Karkhanis, Mr.Manish P. Jagani and Mrs.Gangaben Popatlal Gada as well as the Applicants in Arbitration Petition No.101 of 2022 who have entered into the Consent Terms dated 20/12/2022 as and when the stamp duty to such Addendum Agreements have been paid by the said Mr.Milind Jayant Karkhanis, Mr.Manish P. Jagani and Mrs.Gangaben Popatlal Gada. All the Addendum Agreements shall be registered on the same day or the day after.”

Since the apprehension is expressed by Mr. Kanade that benefit will not be extended to his clients, until and unless Addendum is registered on or before 25.01.2023, the Respondents who are present in the court orally state that necessary steps shall be taken to register the addendums of these resident holders on or before 25.01.2023 subject to the stamp duty being paid by the unit holders.

This take care of three residential unit holders.

6] As regards two unit holders amongst three i.e. Milind Karkhanis and Gangaben Gada are concerned, there are arrears of transit rent and Respondents have specifically undertaken to clear the said arrears by making following statement in Para 3 of the Undertaking/Affidavit:-

“3) We further undertake that we shall clear the arrears of transit rent of Mr.Milind Karkhanis and Mrs.Gangaben Popatlal Gada within 15 days of this undertaking i.e. the amount of Rs.13,64,375/- (Rupees Thirteen Lacs Sixty Four Thousand Three Hundred Seventy Five Only) payable to Mr.Milind Jayant Karkhanis and the amount of Rs.3,88,750/- (Rupees Three Lacs Eighty Eight Thousand Seven Hundred Fifty Only).”

Apart from the above, it is also undertaken by the Respondents that the transit rent payable to all the three residential unit holders shall be payable on or before 10th of each English calendar month from February, 2023 upto handing over possession of the newly constructed premises.

Upon such statement being made in Para 4 of the Undertaking, Mr.Kanade state that rent for the month of January-2023 is also not paid, but the Respondents once again agree that the rent for the month of January, 2023 shall be cleared on or before 31.01.2023.

The Undertaking in Para 4 of the Affidavit, deserve a modification, by directing that the rent shall be continued to be paid till the premises which are handed over to the tenants are fit for its occupation.

7] Now, coming to fourth Intervenor i.e. Mr.Popatlal Gada, who is holder of commercial unit, it is not in dispute that no addendum agreement is entered with him. There is no question of temporary transit rent being paid to him as he is already allotted a temporary transit accommodation and therefore no compensation is payable.

Mr. Kanade, representing Popatlal Gada make certain grievance about the area to be allotted to the unit holders and by inviting my attention to the addendum agreement entered with the Applicants, he would submit that if some additional area was made available to the residential unit holders, the same benefit must be extended to Mr. Popatlal Gada.

This submission is, however, strongly contended by the learned counsel for the Respondents, by submitting that it was in the peculiar facts of the Applicants being holding the premises as residential unit holders and when they approached this Court vide Petition under

Section 9 of the Act of 1996, additional compensation was conferred on them, but this benefit is not extended to any of the commercial unit holders.

On confronted with the said scenario, Mr. Kanade make a statement that he will make his grievance before the appropriate forum and therefore, I deem it appropriate to keep this contention open.

8] Since now satisfaction is expressed by the four intervenors as well as Applicants, as regards the specific undertaking given by Respondent Nos.2 and 3, being recorded on behalf of Respondent No.1, the statement/ commitment made in the 'Consent Terms' as well as 'Affidavit/Undertaking' dated 17.01.2023 shall be scrupulously adhered to.

9] At this juncture, I must also take note of an important aspect of the matter that, on the Arbitration Petition filed by the Applicant under the Act of 1996 bearing ARBP No.356/2021, interim orders were passed in their favour. By the Consent Terms, the parties have agreed that the interim orders passed in the said Arbitration Petition shall be read as modified by the present Consent Terms.

In the wake of the Consent Terms, necessary amendments are also required to be carried out and I direct that the said exercise shall be completed within the period of two weeks from today. ARBAP alongwith Interim Applications is disposed off.

[BHARATI DANGRE, J]