



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

INTERIM APPLICATION NO. 848 OF 2022

IN

SUIT NO. 433 OF 2016

Smt. Shanta Dinesh Kapadia

...Applicant
(Defendant No. 1.)

IN THE MATTER BETWEEN :

Krishnakumar Vallabhdas Kapadia & Ors.

...Plaintiff

Versus

Smt. Shanta Dinesh Kapadia & Anr.

...Defendants

And

The Court Receiver, High Court, Mumbai

...Respondent

- Ms. Vaishali Choudhari, for Applicant/Defendant No. 1.
- Mr. Hasan Sayed, Ms. Swati Margi and R.A. Shaikh, for Plaintiffs.
- Mr. S.K. Dhekale, Court Receiver.

CORAM : MANISH PITALE, J

DATE : 07th SEPTEMBER, 2023

P. C. :

1. Heard, learned Counsel for the parties.
2. This application was kept for disposal today, in the light of the urgency projected on behalf of the Applicant (Defendant No. 1).
3. The grievance of the Applicant is that the Plaintiffs have failed to abide by specific directions issued by this Court in the order dated 23rd November, 2016. By referring to the operative portion of the said order, it was submitted that the Plaintiffs are misinterpreting

clause (vii) of the operative portion of the said order and that they have violated the directions issued by this Court.

4. In this backdrop, it is submitted that, as a consequence of the Plaintiffs having violated the specific directions given by this Court in the said order, directions may be issued for permission to the Applicant to withdraw the amounts that may be lying with the Court Receiver and a further direction to the Plaintiffs to clear all arrears. A further direction is sought against the Plaintiffs for handing over possession of the suit flat, for having committed default as alleged hereinabove.

5. The learned counsel appearing for the Applicant has relied upon the documents filed along with the application and she vehemently contends that an appropriate direction ought to be issued against the Plaintiffs for scrupulously complying with the directions given in the said order dated 23rd November, 2016, and a further direction ought to be issued to permit the Applicant to withdraw the amounts that would be lying with the Court Receiver or shall be deposited by the Plaintiffs in consonance with the directions contained in the said order dated 23rd November, 2016. The learned Counsel for the Applicant has pressed for relief in terms of the prayers made in the present application.

6. On the other hand, learned Counsel appearing for the Plaintiffs invited attention of this Court to the operative portion of the said order dated 23rd November, 2016, read with Paragraph Nos. 11 and 12 thereof, to contend that this Court specifically took note of the conduct of the original Defendant No. 1, while directing the Plaintiffs only to deposit amounts with the Court Receiver and there was no direction or permission granted to the Applicant to withdraw such amounts. It was further submitted that clause (vii) of the operative portion of the said order is very clear. It was brought to the notice of this Court that the amount recorded in the order dated 23rd November, 2016, has been subsequently reinvested periodically by the Prothonotary and Senior Master of this Court, as a consequence of which, as on 13th June, 2022, the said amount had reached the figure of Rs. 8,54,224.96/- and therefore, as on today, the said amount may perhaps be more than Rs. 9,00,000/-. In that light it was submitted that this Court may direct the amount towards arrears to be withdrawn from the account of the Prothonotary and Senior Master of this Court, to be deposited in the account of the Court Receiver, pertaining to the present proceedings. It was further submitted that the Plaintiffs undertake to deposit monthly amounts as directed in the said order dated 23rd November, 2016, at the rate of Rs. 6,000/- per month from September, 2023.

7. The Court Receiver has invited attention of this Court to Court Receiver's Report No. 226 of 2023, wherein the factual position is placed on record and appropriate directions are sought from this Court.

8. Having heard the learned Counsel for the rival parties and upon perusal of the Court Receiver's Report, this Court is of the opinion that there is indeed substance in the contention raised on behalf of the Applicant that the Plaintiffs have failed to deposit amounts as directed in the order dated 23rd November, 2016 with the Court Receiver. But, clause (vii) of the said order appears to be a self-operating mechanism for taking care of such a situation of default on the part of the Plaintiffs. The shortfall of the amounts or the arrears pertaining to the said amounts can be made good from the amount deposited by the Developer with the Prothonotary and Senior Master of this Court, cognizance of which was taken by this Court in the said order dated 23rd November, 2016. Be that as it may, The Plaintiffs cannot be permitted to continue to commit such defaults and appropriate directions can be issued in that regard.

9. It is undisputed that the amount recorded in the order dated 23rd November, 2016, as of now, with periodic reinvestment increased to Rs. 8,54,224.96/- on 13th June, 2022 and certainly to a figure beyond Rs. 9,00,000/- as on today. The said amount is more

than enough to take care of the arrears towards the amounts that were deposited by the Plaintiffs. The Court Receiver's Report indicates that till July, 2023, the arrears were to the tune of Rs. 4,80,000/- and adding the amounts for the months of August and September, the arrears come to Rs. 4,92,000/-.

10. In that light, the Prothonotary and Senior Master of this Court is directed to withdraw an amount of Rs. 4,92,000/- from the amount towards corpus fund deposited by the Developer in the context of the present proceedings and to deposit the same in the account of the Court Receiver, in compliance with the directions contained in order dated 23rd November, 2016. The said amounts shall be invested as per standard practice.

11. The Plaintiffs are specifically directed to ensure that from the Month of October, 2023, they shall deposit the monthly amount as directed in the order dated 23rd November, 2016, regularly with the Court Receiver by the 7th day of each month. In case of two continuous defaults on the part of the Plaintiffs, the Court Receiver is directed to immediately report the same to this Court by furnishing appropriate Court Receiver's Report in the matter.

12. As regards the prayer made in the present application for withdrawal of the said amounts and other prayers, this Court rejects

the said prayers in the light of observations made in the said order dated 23rd November, 2016, specifically in Paragraph Nos. 11 and 12 of the said order. In that light, there is no question of considering the prayers made on behalf of the Applicant for direction to the Plaintiffs to hand over possession of the suit flat to the Applicant.

13. In view of the above, the application is disposed of.

14. In the light of the observations made hereinabove, the Court Receiver's Report No. 226 of 2023, is also disposed of in terms of prayer clauses (d) and (f).

(MANISH PITALE, J.)