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

INTERIM APPLICATION NO.5033 OF 2022
IN
SUIT NO.310 OF 2010

Auroville Co-Operative Housing Society Limited ...Applicant/
Ori. Plaintiff No.1

In the matter between
Auroville Co-Operative Housing Society Limited
and Others ...Plaintiffs
vs.
Saranga Estate Private Limited and Others ...Defendants

Mr. Aditya Shiralkar a/w. Mr. Aryan Srivastava i/b. M/s.Wadia Ghandy & Co., for the Applicant/Plaintiff No. 1.
Mr. Sahil Saiyed, for Defendant No. 4.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 02, 2023

P.C.:

1. The applicant/plaintiff No. 1 has preferred this application to allow the applicant/plaintiff No. 1 to withdraw the sum of Rs. 1,07,60,550/- deposited with this Court by defendant No. 1 pursuant to the order dated 13th September, 2010 in Notice of Motion No. 359 of 2010, alongwith the interest accrued thereon.

2. The applicant/plaintiff No. 1 is a society registered under the Maharashtra Cooperative Societies Act, 1961 (the Act, 1961). It had entered into a registered agreement with Saranga Estate Private

Limited, defendant No. 1, a company registered under the Companies Act, 1956 for carrying out construction on a portion of the property owned by the plaintiffs. Under the terms of the said Construction Agreement, defendant No. 1 was to pay premium to the plaintiff No. 1 society in the event the defendant No. 1 carried out the construction beyond the area stipulated thereunder.

3. It transpired that defendant No. 1 had carried out construction over the area in excess of the stipulated 30,000 sq.ft. Thereupon, the plaintiffs obtained a certificate from an Architect to the effect that the construction was to the tune of 3442.90 sq.mtrs. In a communication dated 13th July, 2006, defendant No. 1 company acknowledged the fact that construction to the extent of 3119 sq.fts beyond the area stipulated under the construction agreement had been carried out. The defendant No. 1 agreed to pay a sum of Rs. 1,07,60,550/- computed at the rate of Rs. 50/- per sq.fts. to the society and Rs. 3,400/- per sq.fts to the members of the society. As there were other breaches of the Construction Agreement, on the part of defendant No. 1, the applicant instituted suit for multi-fold reliefs.

4. In the said suit, a Notice of Motion No. 359 of 2010 was taken

out seeking interim reliefs.

5. At the ad-interim stage, this Court found that no ad-interim relief, save and except directing the first and second defendants to deposit a sum of Rs. 1,07,60,550/-, could be granted. Accordingly, the Court directed the defendant Nos. 1 and 2 to deposit the said amount of Rs. 1,07,60,550/-.

6. In the instant application, the applicant/plaintiff No. 1 avers that liability to pay the said amount of Rs. 1,07,60,550/- is an admitted liability and, thus, at this stage, there is no impediment in passing a decree on the basis of clear and unequivocal admission in the letter dated 13th July, 2006 (Exhibit C) and the affidavit in reply filed on behalf of defendant No. 1 in the said Notice of Motion.

7. Mr. Shiralkar, the learned counsel for the plaintiff submitted that he has instructions to state that, once the instant application is allowed and the plaintiff No. 1 is permitted to withdraw the amount of Rs. 1,07,60,550/-, along with interest accrued thereon, the plaintiffs would withdraw the suit and the entire dispute would thus come to an end.

8. The learned counsel for defendant No. 4 had sought time to consider the application and make a statement as the defendant No. 1 Saranga Estate Private Limited was directed to be struck off from the Register of Companies, and defendant No. 3 Anil Agarwal has passed away in the year 2014.

9. Mr. Saiyed, the learned counsel for defendant No. 4, a former Director of defendant No. 1, submits that the affidavit in reply could not be got affirmed as the defendant No. 4 is not in town. Nonetheless, according to the learned counsel for defendant No. 4, the prayer in the instant application, which is in the nature of a final relief cannot be granted at this stage. As a second limb, the learned counsel would urge that while directing defendant Nos. 1 and 2 to deposit the aforesaid amount of Rs. 1,07,60,550/- this Court had considered the prayer of plaintiff No. 1- society to allow it to withdraw the said amount. However, the said prayer was not granted. Thirdly, the learned counsel for defendant No. 4 submitted that despite defendant Nos. 1 and 2 having shown the willingness to pay the said amount at the earliest point of time, the plaintiff No. 1 – society did not grant membership to the purchasers of the flat and eventually those purchasers were made to approach the Authorities under the Act, 1961 for direction to plaintiff No. 1 society to admit

them as members of the society and ultimately by an order dated 16th October, 2018 in Civil Writ Petition No. 3176 of 2018 and the connected matters, the resistance of the plaintiff No. 1 society to admit the flat purchasers as the members of the plaintiff No. 1 society was repelled. Yet, the plaintiff No. 1 – society has not fully complied with the orders passed by the Authorities under the Act, 1961 and this Court. Therefore, the plaintiff No. 1 is not entitled to discretionary relief of a decree on admission.

10. I have given anxious consideration to the submissions canvassed across the bar, especially the objections sought to be raised on behalf of defendant No. 4.

11. At the outset, it is imperative to note that the fact that defendant No. 1 had acknowledged the liability and even offered to make the payment of the sum of Rs. 1,07,60,550/- towards the premium for excess construction/ utilization of FSI vide letter dated 13th July, 2006, is incontestable. To retain emphasis, it may be appropriate to extract the relevant part of the said letter dated 13th July, 2006. It reads as under:-

> Sub:- Final Payment.
>
> Dear Sir,
> We hereby forward the final payment to the members

> and the society as follows:
>
> | | |
> |---|---|
> | Total Payment due on Area consumed | 33119 sq.ft. |
> | Less: Payment made on Area as per Development Agreement | 30000 sq.ft. |
> | | 3119 sq.ft. |
>
> Total payment @ Rs. 3,450/- will be Rs. 1,07,60,550/- which will be paid as follows :
>
> | | |
> |---|---|
> | To the Society @ Rs. 50/- | 1,55,950/- |
> | To the Members @ Rs.3,400/- | 1,06,04,600/- |
>
> The distribution amongst the members on the basis of pro-rata basis is as per the statement attached.
>
> Thanking you.
>
> Yours faithfully,
>
> For Saranga Estate Pvt. Ltd.
>
> (emphasis supplied)

12. It would be contextually relevant to note that in the affidavit in reply to the Notice of Motion No. 359 of 2010 dated 23rd February, 2010, the defendant No. 1, inter alia contended as under:-

> "The Defendants have complied with obligations listed at (a) and (c) hereinabove and have always been willing to make payment of Rs. 1,07,60,550/- in respect of the utilization and exploitation of the maximum 3119.21 sq. ft. of TDR FSI as envisaged in the said Development Agreement over above the pe allotted TDR-FSI of 30,000 sq.ft which has been consumed in construction of building. The Defendants are even today willing to make payment of aforesaid amount to the plaintiffs in accordance with the payment of aforesaid amount to the plaintiffs in accordance with the Development Agreement and therefore, there is no cause for grievance by the plaintiffs."
>
> (emphasis supplied)

13. It is in the context of the aforesaid contentions, on the part of

defendant No. 1, this Court had thought it appropriate to direct the defendant Nos. 1 and 2 to make the said deposit. The aforesaid contentions, in the affidavit in reply, if read in conjunction with the letter dated 13th July, 2006, extracted above, spell out a clear and unequivocal admission of the liability to pay the said amount of Rs. 1,07,60,550/-. In a sense, there is no contest on the aspect of the said liability. In view of the aforesaid clear and unequivocal acknowledgment of liability, which is contained in the correspondence exchanged before the institution of the suit and also in the affidavit in reply to the Notice of Motion, I do not find any impediment in passing a decree on admission.

14. As regards the objection on behalf of defendant No. 4 that the plaintiff No. 1 has not complied with the reciprocal obligations, particularly that of admitting the flat purchasers as members of the plaintiff No. 1 society, in paragraph Nos. 17(iv) to 17(vii), the plaintiff/applicant has made the following averments:-

> 17(i) Vide a common order dated 16th October, 2018 passed in the aforesaid Writ Petitions, this Court directed the applicant herein to complete all the necessary formalities and grant membership and issue share certificate to 28 third party purchasers of the defendants on the terms specified therein. A copy of the common order dated 16th October, 2018 passed in the aforesaid Writ Petitions is annexed hereto as Exhibit E.

> (v) The applicant has not challenged the said order dated 16th October, 2018, nor does it intend to challenge the same. The said order has attained finality. The applicant is bound by the said order and has complied with the same.
>
> (vi) During the pendency of the captioned suit, the applicant, has followed up with the third party purchasers from time to time requesting them to submit the requisite documents for admitting them as members of the applicant society and for issuance of share certificate in their favour. The applicant has already admitted 23 third party purchasers and issued certificates to them.
>
> (vii) <u>The applicant undertakes to admit the remaining purchasers subject to them complying with the necessary legal requirements.</u>
>
> (emphasis supplied)

15. It would be suffice to note that the plaintiff No. 1 -society is bound to comply with the orders passed by the Authorities under the Act, 1961 as confirmed by this Court by order dated 16th October, 2018 in Civil Writ Petition No. 3176 of 2018 and connected matters, in letter and spirit. The plaintiff No. 1 shall admit the rest of the 5 flat purchasers as members of the plaintiff No. 1 society in terms of its undertaking in paragraph No. 17(vii) extracted above. The said undertaking is accepted as an undertaking to Court.

16. Mr. Saiyed, learned counsel for the defendant No. 4 submitted that the flat purchasers who were made to approach the Authorities under the Act, 1961 to admit them as members of the plaintiff No. 1-

society deserve to be compensated for being made to approach the said Authorities and this Court, and, therefore, a portion of the interest accrued on the said deposit be ordered to be paid to those members.

17. The question of costs ought to have been legitimately raised in the proceedings in which orders were passed by the Authorities and this Court, directing the plaintiff No. 1 to admit those flat purchasers as members of the plaintiff No.1- society. Since the amount of Rs. 1,07,60,550/- represents the admitted liability, the plaintiff No. 1 is legitimately entitled to the interest accrued thereon.

18. In any event, since Mr. Shiralkar submits that the applicant-society has passed a Resolution to withdraw the suit once the Court permits plaintiff No. 1 to withdraw the amount deposited by defendant Nos. 1 and 2, no purpose would be served in keeping the proceeding alive. The plaintiffs are, thus, permitted to withdraw the suit as well.

Hence the following order.

ORDER

1] Application stands allowed.

2] The plaintiff No.1/ Society is permitted to withdraw the amount of Rs. 1,07,60,550/- alongwith the interest accrued thereon.

3] The suit stands disposed as withdrawn.

4] The plaintiff is entitled to refund of Court fees, if any, in accordance with the rules.

5] The undertaking given by the plaintiff No. 1 to admit the remaining flat purchasers, as extracted above, (paragraph 17(vii) of the application) is accepted as an undertaking to the Court.

6] Application disposed.

(N. J. JAMADAR, J.)