

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7523 OF 2024

Ivan Santosh Fernandes & Anr.

.. Petitioners

Versus

Ramanlal Shah HUF & Ors.

.. Respondents

-
- Mr. Rohit Gupta a/w Ms. Kinnar Shah & Ms. Aditi Bhargava i/by
M/s. Divya Shah Associates for Petitioners
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 10, 2024

P. C.:

1. Heard Mr. Gupta, learned Advocate for Petitioners.
2. Present Petition takes exception to the order dated 19.04.2024 which is at Exh. "A", page No. 26 of the Petition. By virtue of the said order, Plaintiffs' prayer for waiver of pre-mediation process in the Commercial Suit filed by the Plaintiffs is rejected. Being aggrieved thereby, Petitioners – Org. Plaintiffs have moved this Court.
3. Mr. Gupta would contend that the dispute initially pertains to entitlement of shop premises which the Plaintiffs have purchased sometime in the year 2015. He has drawn my attention to the registered Agreement for Sale of the said suit shop which is appended at Exh. "B", page No. 27. It is a registered agreement. The description of the shop premises is at page No. 35 and it is nomenclatured as commercial shop premises being Shop No. 2 admeasuring 44.61 sq.

meters built-up area on the ground floor, Wing “B” in the building known as “Shriniwas Apartment”. He has drawn my attention to the consideration clause at page No. 36 and would contend that Petitioners have paid to the vendors a sum of Rs. 85/- lacs and was required to pay the balance amount of Rs. 4.1 lacs at that time. However, subsequently the balance payment of Rs. 4.1 lacs has also been paid over to the vendors.

4. According to Petitioners, the dispute arose thereafter. He would submit across the bar that after purchase of the suit shop, Petitioners were in physical occupation of the suit shop but it was kept closed as the building was dilapidated. He would next submit that the building called Shriniwas Apartment came to be demolished sometime in the year 2022 and just before that time the Co-operative Society was formed. He would submit that the building has gone for redevelopment. The name of the Society is Shriniwas Co-operative Housing Society. It is a Respondent herein. He would submit that it was learnt by Petitioners that the said Society issued and allotted a share certificate in respect of the said suit shop No. 2 in favour of Respondent No. 1. He would submit that Petitioners approached the Society and the Managing Committee Members immediately thereafter but there was no response or reply. He would submit that notice was issued to Respondent No. 1 but he did not accept the service of the

said notice. Said averments are reflected in paragraph Nos. 17 to 20 of the Writ Petition. He would submit that by virtue of Shop No. 2 having been allotted to Respondent No. 1, a substantive right of the Petitioner in the said shop emanating from the registered agreement dated 10.08.2015 has not been taken cognizance by the Society as also by the Developer concerned. Developer is Respondent No.3 herein.

5. The above facts narrated by Mr. Gupta are extremely serious and the substantive right of Respondent No. 1 in respect of shop No. 2 will have to be seen by the Court. Though the Writ Petition is only in respect of waiver of pre-mediation, considering the facts of the present case, I am inclined to issue notice to Respondents.

6. Issue notice to the Respondents made returnable on 24.06.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

7. Respondent No. 1 is directed by this Court to place on record the documentary evidence of title of acquisition of suit shop No. 2 which has been taken cognizance of by the Society. Society is directed by this Court to place on record the details of registered agreement submitted by Respondent No. 1 to the Society in respect of shop No. 2 of which cognizance has been taken by the Society, and after which he has been made a member of the Society. The Developer in the meanwhile shall not act any further in so far as the above shop in the redevelopment is concerned. The redevelopment can certainly proceed. In so far as Shop No. 2 is concerned, all Respondents are directed to take cognizance including the Managing Committee Members of Respondent Society and file their reply.

8. All Respondents are directed to be served copy of the present Petition. If the Respondents do not accept service, an adverse inference shall be drawn and further orders will be passed on the next date.

9. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

10. Stand over to 24th June, 2024.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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