

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10479 OF 2024

Harsh Constructions ...Petitioner
Versus
Sushma Vinay Bajpai And Anr ...Respondents

WITH

WRIT PETITION NO. 10568 OF 2024

Harsh Constructions ...Petitioner
Versus
Vinay Kumar C Bajpai And Anr ...Respondents

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Mr. Anosh Sequeira, with Nemeel Mehta, i/b A.V. Jain Associates, for
the Petitioner.

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CORAM : **AVINASH G. GHAROTE, J.**
DATE : **30th JULY, 2024**

P.C.:

1. Heard Mr. Anosh Sequeira, learned counsel for the petitioner.

ARUN
RAMCHANDRA
SANKPAL

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ARUN RAMCHANDRA
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2. These petitions questions the order dated 29.10.2018 passed by the learned State Commission on the complaint filed by

the respondent No.1, for non delivery of the flat, which was booked by respondent No.1 with the petitioner under an Agreement dated 08.02.2006, in terms of which possession was to be handed over in June 2008. The total consideration payable for the flat area of 425 sq ft was Rs.18,04,820/- out of which a part consideration of Rs.4,69,254/- is admittedly paid. Since the construction of the building was not completed and the possession was not handed over, a complaint was filed before the State Consumer Disputes Redressal Commission (“State Commission”) in the year 2013, when the order dated 29.10.2018 directing the petitioner, to deliver possession of the flat in question was passed, along with an additional direction to the respondent No.1-complainant for depositing of the remaining amount of consideration Rs. 13,35,566/- within two months.

3. There is no dispute that this amount has been deposited by the respondent No. 1-complainant as a result of which the order of the State Commission to hand over possession of that flat within two months thereof became effective (page 107). The petitioner thereafter, has challenged this order before the National Consumer Disputes Redressal Commission (“National

Commission”) in January 2019, who by the impugned judgment dated 22.12.2023 has partly allowed the appeal, by confirming the direction of the State Commission directing the petitioner to hand over the possession, and the amount deposited by the respondent No.1-complainant along with accrued interest, if any, is directed to handed over to the petitioner and further directing the petitioner to pay simple interest @ 8% per annum on the sum mentioned therein from the date of the deposit till the handing of possession with cost of Rs. 25,000/-.

4. The learned counsel for the petitioner, submits, that though the terms of the agreement between the petitioner and respondent No.1 contemplated payment of consideration in stages, since the payment was not made, the same resulted in delay of the construction which has led to the present situation and the delay in completing the project therefore cannot be laid at the door step of the petitioner. He further submits, that the respondent No.1, was duly aware of the stages of the construction, as on 15.12.2012, on account of the fact that the respondent No.1 had inspected the position at site, and also the so called demand letter claimed to have been issued by the

petitioner to him and therefore, could not be said to be unaware of the demand in that regard, and since the failure to pay, is an admitted position, the petitioner could not have saddled with the impugned orders.

5. A perusal of the Agreement in question, dated 01.04.2006, page 43, would indicate, that the payment of the balance consideration by respondent No.1, was not made payable date wise, but was dependent upon the stage of completion, which is indicated from a perusal of Clause 5 of the said Agreement. It was therefore necessary, for the petitioner to establish, that the communications, indicating completion of a particular stage and the demand for the amount due and payable for that stage, had reached the respondent No.1, in spite of which no payment was made.

6. Admittedly before both the learned Commissions below, no material has been placed on record, to indicate the service of such communication upon the respondent No.1. That apart it is an admitted position that construction was not completed in June 2008. Over and above, it is an admitted position that on 15.12.2012, when the inspection is supposed to have been taken

by respondent No.1, the construction was not completed. It is equally an admitted position that even after 15.12.2012, there is no communication from the petitioner to respondent No.1 indicating intimation of the stage completion and demand for the amount due and payable.

7. The learned counsel for the petitioner does not dispute that building was completed in 2015. All this would indicate, that the petitioner himself, has defaulted, vis-a-vis, Clause 5 of the terms of the Agreement executed between the petitioner and the respondent No.1 for which he alone is to be blamed.

8. In that light of the matter, I do not see any reason to interfere with the impugned orders of the Commission, in so far as it directs delivery of possession, of the concerned flat to the respondent 1. The challenge to the impugned orders in respect of the direction to deliver possession of the flat stands rejected.

9. The learned counsel for the petitioner, then raises a ground, that the learned National Commission while directing the relief in terms of operative paragraph (iii) in the impugned order, could not have granted interest from the date of payment rather the interest could only have been granted from July 2008, when it

was found that the building was not completed. There appears to be some credence in this contention, for the obligation to receive interest, would commence, from the agreed date of delivery of possession, in case the same is not complied with, which in this case was admittedly, June 2008. Considering this, issue notice to respondent No.1, only on this limited aspect, regarding the date of commencement of the interest, returnable on 12.08.2024.

10. The learned counsel for the petitioner, upon instructions, makes a statement that interest on the amount as indicated in the operative paragraph (iii) of the order of the National Commission shall be deposited from July 2008 till date, within a period of one week from today, accepting this statement as the statement to the Court, there shall be a stay to operative paragraph (iii) of the judgment of the National Commission.

11. It is made clear that directions of the National Commission regarding delivery of possession have not been stayed and continue to remain in force and effective.

(AVINASH G. GHAROTE, J.)