



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (L) NO. 18943 OF 2022
IN
WRIT PETITION NO. 2680 OF 2021

Manisha Tulsiani ... Petitioner

vs.

Macrotech Developers Ltd. & Ors. ... Respondents

WITH
INTERIM APPLICATION (L) NO. 31288 OF 2023
IN
CONTEMPT PETITION (L) NO. 18943 OF 2022

Macrotech Developers Ltd. ... Applicant

In the matter between

Manisha Tulsiani ... Petitioner

vs.

Macrotech Developers Ltd. & Ors. ... Respondents

Mr. Karl Tamboly, Ms. Ayushi Anandpara a/w. Mr. Shiraj Salelkar, Ms. Raksha Thakkar and Mr. Hamza Mir i/b. Lexicon Law Partners for the petitioner.
Mr. Niket Mehta a/w. Mr. Akshat Tiwari for the applicant.
Smt. Jyoti Chavan, Addl. GP a/w. Mr. Manish Upadhye, AGP for the State.
Mr. S.K. Dhekale, Court Receiver a/w. Mr. N.C. Pawar, OSD Court Receiver present.

CORAM: G. S. KULKARNI &
K.C. SANT, JJ.
DATED: 19 March, 2024

P.C.

1. We have heard Mr. Tamboly, learned counsel for the petitioner and Mr. Mehta, learned counsel for respondent no. 1 on this Contempt Petition. Respondent nos. 2 to 10 are stated to be directors of respondent no. 1.
2. This Contempt Petition is filed alleging contempt of the order dated 8 December, 2021 passed by this Court whereby this Court had taken on record

Consent Minutes of the Order as signed on behalf of the parties and had disposed of the petition in terms of such Minutes of the Order, thereby accepting the undertakings as made in the different paragraphs of the Minutes of the Order.

3. In the Minutes of the Order, there was an agreement between the parties that respondent no. 1 shall hand over the possession of the flat in question (Flat No. B-7301), the dimensions of which are set out in paragraph 1 of the Minutes of the Order, on the 73rd floor of the building known as “Trump® Tower, Mumbai in the project known as “The Park”, along with all the fittings, facilities, privileges and amenities as listed in Annexure ‘7’ annexed to the Agreement to Sell dated 19 June, 2018 on or before 25 April, 2022.

4. On behalf of the petitioner, it was agreed that the balance consideration of Rs.92,00,000/- along with Society and other charges of Rs.17,88,158/- and GST amount of Rs. 9,37,725/- aggregating to Rs. 1,19,25,883/- less an amount of Rs.5,59,190/- totally aggregating to Rs. 1,13,66,693/- would be deposited in this Court with the learned Prothonotary and Senior Master on 10 April, 2022 and the said amount was to be invested till the proposed date of possession. There are other terms and conditions as agreed between the parties, however, they are not relevant.

5. The case of the petitioner in the Contempt Petition is that respondent no. 1 has not fulfilled its obligation to provide the privileges and amenities as

set out in Annexure '7'. It appears to be not in dispute that the possession of the flat was handed over to the petitioner with all the fittings, facilities on which there is no dispute. The dispute is in regard to the privileges and amenities as set out in paragraph 7, which pertains to be under the head "Exclusive privileges for Trump Tower Residents", which is exclusive 5 year fractional share membership to Lodha Private Jets with 10 hours of free flying time that can be used anytime during the membership period and with further condition that the members can avail 100% discount on any additional usage. It is contended that such privilege has not been granted to the petitioner though it is forming part of the Minutes of the Order.

6. The case of the respondent on such contention as urged on behalf of the petitioner is that Lodha Private Jets itself is in liquidation and hence the said company cannot be expected to grant the said privileges/facilities and hence an alternate offer was made to the petitioner as also to the other residents. Such alternate offer is annexed at page 26 Exhibit A of the Interim Application filed on behalf of the respondents. It is thus the respondent's contention that once it was legally not possible for respondent no. 1 to comply with such privilege to be granted by such company, which was itself in liquidation, there cannot be any contempt of the order passed by this Court, on the ground that such a privilege has not been accorded to the petitioner.

7. In our opinion, there is much substance in the contentions as urged on behalf of the respondent. The reasons as set out, and which appears to be not in dispute that the said company is in liquidation, thus certainly it is a situation of the respondent not being in a position, to perform such obligations. Such non-compliance was beyond the control of the respondent, hence it cannot be attributed to be any intentional disobedience of the orders passed by this Court, so as to proceed against the respondent in the contempt proceedings. We are, accordingly, not inclined to entertain the Contempt Petition for such reasons. It is accordingly dismissed. However, we make it clear that whatever alternate privileges which are being offered by the respondent to the petitioner, the petitioner shall be entitled to the same as per the undertaking in the Interim application as and when demanded.

8. The second proceeding as listed before us today is the Interim Application filed on behalf of the respondent praying for withdrawal of the amount, which came to be deposited by the petitioner in this Court in pursuance of what was agreed between the parties in the Consent Minutes of the Order.

9. Mr. Tamboly, learned counsel for the petitioner has fairly stated that insofar as the basic consideration amount of Rs.92 lakhs is concerned, there ought not to be any objection from the petitioner to withdraw the amount as

also the amount of GST by the respondent. The only contention is that the said amount includes Rs.17,88,158/- towards the Society charges.

10. Insofar as the Society charges are concerned, learned counsel for the respondent has placed on record a copy of the possession cum demand letter dated 2 June, 2021 issued to the petitioner enclosing a document titled as 'Annexure A', which bears the amounts in respect of "Society and Other charges". The said letter along with annexure is taken on record and marked 'X' for identification. It is stated on behalf of the respondent that an amount of Rs.17,88,158/- shall be accounted under the different heads, which are set out under the said 'Society and Other Charges' (under Item B) of the said annexure. This is agreeable to the petitioner. Thus, once such amount of Rs.17,88,158/- is accounted to be utilized under the different heads, the petitioner in future would not be required to pay the very same amounts under such heads for the periods mentioned in the letter marked as "X" which is to be calculated from the actual date of possession, i.e., 25 April, 2022". The respondent shall deposit the appropriate amount in the Society's account or any other appropriate account, the intimation of which be issued to the petitioner.

11. In this view of the matter, we are inclined to dispose of the Interim Application by permitting the respondents to withdraw the amount as deposited in this Court with accrued interest thereon. Learned Prothonotary

and Senior Master shall do the needful within a period of two weeks from the date the copy of the order is presented before him.

12. Both the proceedings are disposed of in the above terms. No costs.

(K.C. SANT, J.)

(G. S. KULKARNI , J.)

Corrected as per the order of speaking to minutes dated 4 April, 2024.