

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COURT RECEIVER'S REPORT NO.531 OF 2024

D. N. Nagar "Deep" Co-operative Housing ...Applicants
Society Ltd. & Ors.

Versus

Shree Shubh Enterprises & Ors. ...Respondents

WITH

NOTICE OF MOTION NO.620 OF 2024

IN

SUIT NO.98 OF 2013

D. N. Nagar "Deep" Co-operative Housing ...Applicant
Society Ltd. & Ors.

Versus

Shree Shubh Enterprises & Ors. ...Respondents

WITH

NOTICE OF MOTION (L) NO.1136 OF 2019

IN

NOTICE OF MOTION NO.1296 OF 2015

D. N. Nagar "Deep" Co-operative Housing ...Applicants
Society Ltd. & Ors.

Versus

Shree Shubh Enterprises & Ors. ...Respondents

NOTICE OF MOTION NO.1296 OF 2015

IN

NOTICE OF MOTION NO.223 OF 2013

D. N. Nagar "Deep" Co-operative Housing ...Applicants
Society Ltd. & Ors.

Versus

Shree Shubh Enterprises & Ors. ...Respondents

WITH
NOTICE OF MOTION NO.1447 OF 2015
IN
SUIT NO.98 OF 2013

D. N. Nagar “Deep” Co-operative Housing ...Applicants
Society Ltd. & Ors.

Versus

Shree Shubh Enterprises & Ors.

...Respondents

Mr. Mohit Jadhav a/w. Ms. Megha Shigavan and Ms. Kajal Chourasia, Advocates, for the Plaintiffs.

Mr. K. Padmashri (through Video Conference), Advocate, for the Defendant Nos.1 and 3 in NMS/1296/2015.

Mr. N. C. Pawar, Officer on Special Duty, Court Receiver, High Court, Bombay, present.

Ms. Charusheela Vaidya, 2nd Assistant to Court Receiver, High Court, Bombay, present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 18th DECEMBER 2024

P. C.:

1. The Court Receiver has sought the following prayers:

“(a) Hon'ble Court may be pleased to pass direction as to which area of Flat No. B-205: i) 750 sq.ft. as claimed the plaintiff society (as mentioned in para 15 above) ii) 834 sq.ft. as per measurements of M/s Shetgiri and Associates (as mentioned in para 17 above), or iii) 840 sq.ft. as per measurements of M/s Neelam Arch (as mentioned in para 18 above) be mentioned in the Public Notice and Terms and Conditions of Sale ?

(b) in the alternate, Hon'ble Court may be pleased to direct the Court Receiver to appoint another architect from its panel to take measurements of Flat No. B-205 to ascertain its exact area and to mention such area in the public notice and Terms and Conditions of Sale;

(c) If prayer (b) is allowed then, Hon'ble Court may be pleased to pass direction to parties to bear cost of such measurements;

(d) The Plaintiff society may be directed to produce documents of title before the Court Receiver as per provisions of Rule 520 of the Bombay High Court (Original Side) Rules, 1980;

(e) Hon'ble Court may be pleased to extend further time of three months for completion of the process of sale in respect of Flat No. B-205;

(f) Cost of this report may be quantified at Rs. 5000/- and parties may be directed to deposit the said amount with the Court Receiver;

(g) Any other directions that this Hon'ble Court may deem fit just and proper be passed."

2. As far as prayer clause (a) of the Court Receiver's Report is concerned, the report of Shetgiri and Associates is dated 16th March 2016 and it merely mentions that the subject flat i.e. Flat No.B-205 admeasures 834 sq.ft. Report of Architect M/s. Neelam Arch is dated 10th January 2024 and the same gives bifercation of the flat in clause No.5 as follows:

"Measured carpet area:721 sq.ft.+95 sq.ft. Flower bed area+24 sq.ft. Dry balcony area."

The said Flat is described in clause No.2 as follows:-

“Living+Kitchen+Dining+2 Bedroom+2 Toilets+
Passage+Dry Balcony+Flower bed.”

3. Accordingly, it is directed that in the Public Notice and in the terms and conditions of sale area and particulars in detail as set out by M/s. Neelam Arch in report dated 10th January 2024 in clause No.2 and clause No.5 be mentioned.

4. In view of the above direction, prayer clause (b) and (c) of the C.R. Report does not survive.

5. As far as prayer clause (d) is concerned, the Plaintiffs have submitted compilation of about 59 pages along with index to the learned Court Receiver. The same shows that by Development Agreement dated 17th March 2002 executed between the developer and the Plaintiffs-Society *inter alia* developer has agreed to provide corpus to the society. Thereafter, there is modification/Confirmation Deed executed on 14th October 2004 between the developer and the society wherein it is provided that the developer shall make available to the society the corpus of such amount which shall be kept by the society in fixed deposit and interest accrued thereon shall be utilized towards the maintenance

charges of the flats allotted to the existing members of the new building.

6. Present Suit has been filed in the year 2013. By the order dated 10th February 2016 passed by a learned Single Judge in Notice of Motion No.1296 of 2015 in Notice of Motion No.223 of 2013 in Suit No.98 of 2013, the Court Receiver, High Court, Bombay has been appointed in respect of flat Nos. B-201, 205, 401 and 405 of the Suit building. It is admitted position that except subject Flat No.B-205 all flats have already been sold by the Court Receiver. Thus, the Court Receiver is required to take steps for sale of the said flat No.B-205 pursuant to earlier orders passed by the learned Single Judge including order dated 18th October 2023. Thus, the documents as available with the Plaintiffs-Society are already provided by the learned Counsel appearing for the Plaintiffs. However, the Court Receiver is at liberty to sought further documents, if required.

7. By prayer clause (e), the Court Receiver has sought extension of time of three months for completion of the process of sale in respect of Flat No.B-205. Before considering prayer clause

(e) it is necessary to set out clause Nos.10 and 11 of the order dated 18th October 2023 passed by Learned Judge (Milind N. Jadhav J.) in Interim Application (L) No.8229 of 2023, which reads as under:-

*“10. After this order is dictated in open Court, Mr. Jadhav has made a request to the Court that in view of the orders passed by this Court which have been perused by the Court and the time line **and further delay which would be faced by the Applicant Society, the Court should fix some time bound programme for sale of Flat No. B-205** considering the fact that the Court Receiver will have now to take steps in accordance of law, prepare and invite an appropriate valuation report to ascertain the market value of the said flat as on date and thereafter take steps and in order to not to delay the process, he seeks certain directions from this Court.*

*11. Mr. Jadhav is right in making this request especially in view of the fact that the Society has suffered since long which is evident from the aforementioned orders alluded to herein above. **I direct the Court Receiver to complete the sale in respect of Flat No. B-205 strictly in accordance with law and in any event within a period of six months from today.**”*

(Emphasis added)

8. It is very clear that the time limit granted by Learned Single Judge by said order dated 18th October 2023 has expired on 18th April 2024. The present Interim Application is taken out on 14th December 2024 i.e. after a period of about 8 months. Thus, there is substance in the contention raised by Mr. Mohit Jadhav, learned Counsel appearing for the Applicants / Plaintiffs that the Court Receiver is delaying the process of sale of subject Flat No. B-205.

9. Although, the prayer clause (e) is granted, the Court Receiver is directed to complete the sale in respect of Flat No. B-205 strictly within a period of 3 months in accordance with law.

10. By prayer clause (f) it is sought that cost of this report be quantified at Rs.5,000/- and parties may be directed to deposit the said amount with the Court Receiver. The said prayer clause (f) is granted.

11. Accordingly, Court Receiver's Report No.531 of 2024 is disposed of in above terms.

[MADHAV J. JAMDAR, J.]