
(1981) 07 BOM CK 0031

In the Bombay High Court

Case No : Criminal Application No. 911 of 1980

A.K. Velu

APPELLANT

Vs

K.S. Ramkrishnan and Another

RESPONDENT

Date of Decision : 30-07-1981

Acts Referred:

Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 12, 4

Citation : (1983) 1 BomCR 338

Hon'ble Judges : S.K. Desai, J

Bench : Single Bench

Advocate : H.S. Shreepad Murthy, for the Appellant; A.B. Naik, Public Prosecutor, for the Respondent

Judgement

S.K. Desai, J.—This is a Criminal Application No. 165/S of 1979 filed by the accused in the Court of the learned Metropolitan Magistrate, 31st Court, Vikhroli. The compliant in the said case is K.S. Ramkrishnan, the 1st respondent before me. The complaint is u/s 12 of the Maharashtra Ownership Flats Act, 1963. The said complaint refers to a building known as Shankar Kunj situated at Plot No. 19-B, Asalpe, Bombay 400 084. The complaint claims to be joint owner, builder and promoter of the said property. The complaint refers to an agreement dated 9th March, 1978 executed between the compliant and his wife on the one hand and the two accused on the other and proceeds that accused has committed a breach of Clause 17 read with Clause 21 and 44 of the said agreement. The breach is in failure to pay monthly outgoings at the rate of Rs. 122/- per month. The other alleged failure is to co-operate with the builder in the formation of the common organisation.

2. Prima facie, the case is covered by section 12 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (Act XLV of 1963). The Advocate for the petitioner has, however, submitted that there has been a failure on the part of the owner,

builder and promoter (respondent No. 1) to register the agreement for sale with the two accused persons. According to his further submission section 4 of the said Act requires that such agreements shall be registered under the Indian Registration Act. It is submitted further that if there is any failure to comply with this mandatory requirement, no rights can be founded on such an agreement and the agreement must be treated as invalid and ineffective.

3. During the course of argument it was submitted that the position has now been crystalised as far as this High Court is concerned by the decision of a Division Bench of this Court (Chandurkar and Bhonsale, JJ.) in Letters Patent Appeal No. 44 of 1976, The Association of Commerce House Block Owners Limited v. Vishindas Samaldas and others, decided on 8th/9th December, 1980.

I have gone through paragraphs 40 to 52 of the aforesaid decision and it bears out the submission of the learned Advocate.

4. In paragraph 13 of the revision petition the fact that the agreement between the petitioner and respondent No. 1 is not registered is clearly adverted to. The petitioner has duly verified the contents of paragraphs 13. The first respondent though duly served has chosen to remain absent. I must accordingly proceed upon the footing that the agreement is not registered. According to the decision of the Division Bench it was compulsorily registrable and if it is not registered it must be treated as invalid, ineffective and cannot be the foundation of any rights. Equally so, it can not constitute the foundation of any liability on either the revision petitioner or accused No. 2 in the said case.

5. In the result, the petitioner is entitled to the order sought for. Rule accordingly made absolute in terms of prayer (a).