

(1996) 07 BOM CK 0072

In the Bombay High Court

Case No : Civil Revision Application No. 8 of 1996

Chowgule and Co. Ltd.

APPELLANT

Vs

Rizvi Estates and Hotels Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Contract Act, 1872 — Section 10, 73, 74
Specific Relief Act, 1963 — Section 4, 5

Citation : (1997) 4 BomCR 648

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : S.D. Lotlikar, for the Appellant; A.N.S. Nadkarni, for the Respondent

Final Decision : Allowed

Judgement

R.K. Batta, J.—The petitioner was occupying an area of 163.5 square metres as tenant of respondent on payment of Rs. 863/- per month in a building near Customs House. The respondent wanted to demolish the said old building and wanted to construct a multi-storeyed building. There were 3 tenants in the said building including the petitioner. The petitioner and the respondent entered into an agreement on 2-4-1988 in pursuance of which the petitioner vacated the said tenanted portion of the old building with an understanding that in the new building built-up area of 98.1 square metres together with the corresponding mezanine floor of 29.40 square metres shall be transferred to the petitioner on ownership basis within 2 months after occupancy Certificate was obtained. The petitioner was to be put back in possession of the new premises within 8 months of 2-4-1988. In the meantime, the petitioner was temporarily accommodated in Shop Nos. 6 and 7 without any payment. Shop No. 6 consisted of an area of 28.5 square metres plus mezanine floor of 9 square metres and Shop No. 7 consisted of an area of 35 square metres and mezanine floor of 11 square metres. The Agreement also provided that if the petitioner was not given occupation of premises in the new building within 8 months of the date of Agreement, the

respondent was to pay monthly compensation of Rs. 10,000/- for delay in occupation of the newly built premises within 8 days every month from 1-12-1988. The respondent failed to commence construction and the petitioner gave 3 notices on 16-12-1988, 2-2-1989 and 22-1-1991 after which he filed the suit seeking specific performance of the contract, compensation at the rate of Rs. 10,000/- per month from December, 1988 till the filing of the suit and further compensation till the new premises was handed over.

2. The respondent took all sorts of pleas including that the Agreement was contrary to provisions of Rent Act, opposed to public policy, without any consideration etc. and was void ab initio. According to respondent, it had taken all possible steps to perform its part of the contract, but one of the 3 tenants, who had agreed to vacate the old building, refused to vacate the same and the said tenant Mahadev Vaman Chodankar filed a Civil suit against the respondent wherein he sought temporary injunction against the respondent from demolishing the building. The said tenant did not succeed and the ad interim injunction restraining respondent from demolishing the building was vacated. However, the said tenant filed an Appeal before the District Court and again obtained interim relief. The said Appeal was also dismissed but none of the Advocates have been able to give me the date on which the said Appeal was dismissed.

3. Placing reliance on judgment delivered by Brother Dhanuka, J., in Chandrakant Shankar Pradhan Vs. M/s. Verma Investment Corporation, , the petitioner presses claim for interim compensation u/s 94 C.P.C. This application was filed somewhere in June, 1994 and the claim for interim compensation has been made with effect from 2-12-1988. According to Shri Lotlikar, the respondent has not only taken all sorts of bogus pleas in the suit, but the respondent has not taken any steps for the construction of the new building even though 8 years have already elapsed. According to him, the two shops which were given to the petitioner as temporary alternate accommodation, cannot be taken into account while examining the question of liability of the respondent for payment of compensation of Rs. 10,000/- per month in view of Clause 15 of the Agreement and this alternate construction was free of cost. It was further pointed out that in the case under consideration, there is a specific Clause for payment of compensation and such Clause did not exist in the case in Chandrakant Shankar Pradhan Vs. M/s. Verma Investment Corporation, , but even inspite of that, the Court had awarded compensation in favour of the petitioner therein.

4. Advocate Shri A.N.S. Nadkarni urged before me that even before the expiry of 8 months period, the respondent had provided another room, namely, Room No. 305 having an area of 28.5 square metres in addition to Shop No. 6 and Shop No. 7 which were already provided as alternate accommodation. According to him, the total area in possession of the petitioner is about 113 square metres as against agreed 98.1 square metres plus 29. 43 mezanine floor in the new building. He, therefore, contends that the petitioners are, in fact, in possession of

more area than they would be entitled under the said Agreement in the new building. On the question of non-commencement of the project, it has been contended that but for the litigation started by the third tenant Mahadev Vaman Chodankar, the construction would have not commenced. According to him, the construction was delayed since the said tenant approached the Civil Court and there was an interim injunction to restrain the respondent from demolishing the building. In the said civil suit, the respondent had expressed his willingness to demolish part of the building leaving the portion occupied by the said tenant Mahadev Vaman Chodankar. But, according to Advocate Shri Nadkarni, even the said part of the building could not be demolished and constructed on account of non-feasibility of the same. He also submitted that the respondent has even instituted proceedings for eviction of the said tenant before the Rent Controller and in the said proceedings, evidence of the respondent is in progress. On the basis of the above contentions, he submits that the application be dismissed.

5. Looking to the plight of people in the hands of builders, concept of interim compensation in jurisprudence is sought to be developed by this Court by judgment delivered by brother Dhanuka, J., in Chandrakant Shankar Pradhan Vs. M/s. Verma Investment Corporation, . Independently of that judgment, similar thoughts were incorporated by brother G.D. Kamat, J., in Appeal from Order No. 55 of 1992 Chandrakant S. Prabhu v. Shamrao Dattatrai Patil & anr. In the said judgment, it has been pointed out by brother G.D. Kamat, J.:-

"..... I may observe that a new culture has come up with builders and so called developers. After taking sizeable amounts from the so called prospective purchasers, they try to frustrate the contract and the strategy it appears is to make the prospective purchasers to go to a Court for the strategist knows that any ordinary litigation in a Court takes years and years. The result is this new breed of builders and estate developers block the hard earned money of purchasers and make them run after litigations with no prospect of getting a decision at an early date and in the process it so works that the prospective purchasers finally give up by settling the matter one way or the other. The trial Court should therefore bear in mind that in matters like this type, use of practical wisdom is necessary and more particularly to curb this new culture...."

In the said case, a sum of Rs. 44,000/- had been taken, but the petitioner had not been provided with the flat. The petitioner was a poor school teacher.

6. In Chandrakant Shankar Pradhan Vs. M/s. Verma Investment Corporation, , the petitioner was retired employee of Bombay Port Trust, aged over 70 years; even inspite of the money being paid in advance, for a decade or so, premises was not provided to him; the respondents therein had started construction of new building to some extent about a decade back but stopped the same very soon and the alternate accommodation which had been provided was horrible and in deplorable condition.

7. It is no doubt true that in both the cases to which reference has been made

above, the petitioners were individuals and in the case under consideration before me, the petitioner is a Company. Nevertheless, principles which have been enunciated in the said judgments have to be applied to the case under consideration. The petitioner had vacated the old premises on 2-4-1988 and even after 8 years, there is no sign of any progress in the construction of the said building. Partly, of course, the building could not be constructed on account of the proceedings initiated by one of the tenants Mahadev Vaman Chodankar. However, nothing prevented the respondent to demolish part of the building and to start construction of part of the building and, in fact, the respondent had shown his willingness to demolish part of the building leaving aside the tenanted premises of Mahadev Vaman Chodankar. Later on, it is represented before me in the course of arguments by Advocate Shri A.N.S. Nadkarni that it is not feasible to demolish part of the building or to construct part of the building, but no feasibility report or any other material has been placed before me in order to substantiate the said plea. Therefore, prima facie, the respondent is certainly to be blamed for non-commencement of the construction.

8. The next question which I would like to deal relates to equity inter se the parties in this litigation. The petitioner was initially occupying an area of 163.5 square metres in the old building and was paying Rs. 863 per month for occupation of the same. The Agreement provided for temporary alternate accommodation free of cost and in view of the said arrangement, the petitioners were provided Shop No. 6 and Shop No. 7--- areas of which have already been enumerated above. This temporary alternate accommodation was free of cost as against Rs. 863/- which was being paid earlier by the petitioner. Clause 15 of the Agreement did provide that if the new premises is not completed within 8 months, the petitioner shall continue to occupy the said Shops Nos. 6 and 7 in Rizvi Chambers on the same terms and conditions as detailed hereinbefore, until they are given permanent occupancy in the newly built-up area as provided in the said Agreement. In this respect, it is pertinent to note, as has been stated before me by Advocate Shri A.N.S. Nadkarni, that even before the expiry of the said period of 8 months, the respondent provided another room, namely, Room No. 305 to the petitioner having an area of 28.5 square metres. Taking the same into consideration, the total area which the petitioner is enjoying from somewhere before the expiry of the said 8 months period, is about 113 square metres and this area is still in occupation of the petitioner free of cost - though, of course, the respondent had claimed compensation of Rs. 15,000/- by way of counter-claim and had even filed an application for deposit of the said amount which was dismissed by the trial Court. It is no doubt true that under the Agreement, the area in the new building which was to be provided to the petitioner was 98.1 square metres plus 29.43 mezzanine floor, but, for the present we are more concerned with the area in possession of the petitioner vis-a-vis area of 163.5 square metres which was earlier occupied by the petitioner in the old building. This means that as compared to the area in the old premises, the alternate area provided by the respondent is short by about 50 square

metres, that is to say, by about 1/3 of 163.5 square metres. Therefore, as against the interim claim of Rs. 10,000/- per month, I am of the opinion that the interim claim at this stage should be fixed at Rs. 3,000/- per month. Of course, it will not be possible to grant interim claim prior to June, 1994 since the petitioner had approached the Court with a delay of 6 years. In this respect, it has been contended by Advocate Shri Lotlikar that the petitioner had come to the Court in view of the judgment of this Court in Chandrakant Shankar Pradhan Vs. M/s. Verma Investment Corporation, . The said fact would not make much difference.

9. In view of the above, I am of the opinion that taking into consideration the facts and circumstances of the case, interim compensation of Rs. 3,000/- per month at this stage should be awarded in favour of the petitioner with effect from 1-7-1994 till the final disposal of the suit. Respondents shall deposit the amount due upto date in the trial Court within a period of 1 month. Liberty to the petitioner to withdraw the same upon furnishing sufficient security to the satisfaction of the trial Court. The respondents shall continue to make deposit of Rs. 3,000/- per month by 15th of every month till the final disposal of the suit and the liberty to withdraw shall be on the same terms in respect of the said amounts. The payments made under this Order shall be subject to final Order which may be passed in the suit. I would like to make it clear that the aforesaid discussion and observations would not in any manner influence the trial Court in coming to its own decision on merits of the case including the question of payment of compensation claimed by the petitioner.

10. Revision is allowed to that extent. Rule made absolute to that extent. In the facts and circumstances, I would leave the parties to bear their costs.