

(2012) 10 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition No's. 4461, 2368, 4463, 4467, 4468, 4471, 4481, 4482, 4483, 4484, 4485, 4486, 4487, 4488, 4489, 4491, 4807, 4819, 4825, 4966, 4976, 4977, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4999 and 5002 of 2012

M/s. Indrapuram Resort Apartments and Another APPELLANT
Vs

Mr. Ramniklal A. Jain RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Bombay Court Fees Act, 1959 — Section 12, 6(iv)(j), 6(v)

Citation : (2013) 1 ALLMR 1 : (2013) 1 BomCR 857 : (2013) 1 MhLj 99

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Dushyant Purekar, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Savant, J.—The above group of Petitions raises a common issue and involves identical facts and are, therefore, heard together. In one of the Writ Petitions out of the above group being Writ Petition No. 2368 of 2012, Rule came to be issued on 16th April, 2012 and further proceedings in the concerned Suit came to be stayed. The rest of the 30 Petitions had come up for admission thereafter and in view of the Rule issued in the said Writ Petition No. 2368 of 2012, it was ordered that the entire group of 31 Petitions would be heard finally which included the 30 Petitions which are pending admission. Hence Rule to issue in the said 30 Petitions made returnable forthwith and heard.

2. In spite of the notice of final disposal, the Respondent is not appearing and is also not represented.

3. The short question which arises in the above group of the Petitions is whether the Petitioner is liable to pay Court Fees u/s 6(iv) (j) of the Bombay Court Fees Act, 1959 or 6(v) of the said Act.

For the sake of convenience Writ Petition No. 2368 of 2012 is treated as a lead matter. The facts necessary to be cited for adjudication of the above Petitions are therefore taken from the said Petition.

4. The Petitioner in the said Petition and the companion matters is the original Plaintiff who has filed the Suits in question, one of them being Regular Civil Suit No. 382 of 2010 which is the subject matter of Writ Petition No. 2368 of 2010. The Petitioner is a developer and has undertaken the development of a project known as Indrapuram Resort Apartments being constructed over Survey No. 254, Village Achole, Taluka Vasai.

5. It is the case of the Plaintiff that the Respondent to the above Petition i.e. Defendant in the said Suit had agreed to purchase 37 flats from the Petitioners. An agreement to that effect was entered into on 26.07.2008. The dates of the agreement in respect of the other suits are different but are near about the same contemporaneous time. It is the case of the Plaintiff that the Defendant assured that he would pay the balance price and on such assurance, according to the Plaintiff, he handed over possession of the flat on humanitarian grounds. It is the case of the Plaintiff that in spite of handing over possession, the Defendant did not pay the balance amount. The Plaintiff, therefore, by notices addressed to the Defendant called upon the Defendant to pay the balance amount, but the said notices did not evince any response from the Defendant. The Plaintiff ultimately terminated the agreements. The Plaintiff thereafter filed 31 suits which are the subject matter of the above group of Petitions.

6. In the context of the issue that arises in the Petition, it would be apposite to reproduce the prayers in the Suit.

(a) that the Hon''ble Court be pleased to order, decree and declare that the Plaintiff was and is ready and willing to perform its part of the contract upon the terms and conditions incorporated in the agreement dated 12.06.2008 in respect of the suit flat.

(b) that the Hon''ble Court be pleased to order, decree and declare that in spite of the receipt of the possession of the suit flat, the Defendant has not paid the balance consideration and has not obeyed and contravened the terms and conditions incorporated in the agreement dated 12.06.2008 in respect of the suit flat and that shows that the Defendant was and is not ready and willing to perform his part of the contract.

(c) that the Hon''ble Court be pleased to order, decree and declare that in spite of the receipt of the notice dated 3rd August, 2010 the Defendant has failed to comply with the demands and requisitions made in the said notice within the stipulated time and therefore, by notice dated 3rd August, 2010, the Plaintiff has rightly terminated the said agreement.

(d) that the Hon''ble Court be pleased to order, decree and direct the defendant to hand over the vacant and peaceful possession of the suit flat to the Plaintiff.

(e) that the Hon"ble Court be pleased to issue an order of permanent injunction restraining the Defendant, his agents, servants, or any other person or persons claiming through the Defendant from creating any third party interest as well as incurring any liability in respect of the suit flat by whatsoever nature and/or by whatsoever manner.

7. Hence by prayer clause (a), the Plaintiff is seeking declaration that he is ready and willing to perform his part of the contract incorporated in the agreement dated 26.07.2008 in respect of the flat in question. In terms of prayer clause(b), the Plaintiff seeks a declaration that the Defendant was and is not willing to perform his part of the contract. By prayer clause (c), the Plaintiff is seeking a declaration that the agreement in question has been rightly terminated and by prayer clause (d), the Plaintiff is seeking an order directing the Defendant to hand over the vacant and peaceful possession of the suit flat to the Plaintiff.

8. Significantly, in the plaint or the prayer clauses, there is no reference to the provisions of the Maharashtra Ownership of the Flats Act, 1963 or the failure of the Respondent to fulfill his obligations. The said prayers, as can be seen, revolve around the agreement dated 26.07.2008 in respect of which an unusual positive declaration is sought, as also a negative declaration, and the recovery of possession of the flat which has been handed over to the Defendant. It is required to be noted that the said reliefs are sought by the Plaintiff after terminating the agreement in question in respect of each of the flats covered by each of the suits.

9. In the context of the prayers sought in the Suit, the Trial Court, it seems suo-moto framed the issue as to whether the Suit was properly valued. The Suit, it seems had progressed and that the Defendant was proceeded with exparte as in spite of summons being served he did not appear. The Trial Court on a consideration of the prayers in the Suit and having regard to Section 6(iv) (j) of the Bombay Court Fees Act (the said Act, for short), under which the Plaintiff had valued the Suit on the ground that he was only seeking a declaration held, that considering the prayers in the Suit, the Suit was susceptible to monetary valuation and will have to be valued u/s 6(v) of the said Act. The Trial Court, has therefore, directed the Plaintiff to correct the valuation of the Suit and pay the requisite Court fees thereon within the time stipulated in its order dated 9th February, 2012. As indicated above, it is the said order which is impugned in the present Petitions.

10. Heard Shri. Purekar, the Learned Counsel appearing for the Petitioner in each of the above Petitions.

11. The principal contention of the Learned Counsel for the Petitioner is that the Suits in question have been filed by the Plaintiff for the enforcement of the obligation of the Defendant in each of the Suits under MOFA. The Learned Counsel would seek to buttress the said submission relying on the prayers made in the said Suit. The Learned Counsel would contend that u/s 12 of the MOFA, it

is the obligation of the flat purchaser to make the payment for the flats which is agreed to be sold to him. However, in the instant case, since there is a failure on the part of the flat purchaser to make the payment that the Suit in question has been filed. The Learned Counsel would contend that the fact that the possession of the flat in question has been sought by the Plaintiff would not impinge upon the fact that the Suit is essentially one for enforcement of the obligation of the flat purchaser under the MOFA. The Learned Counsel in support of his submission would seek to rely upon two judgments of two learned Single Judges of this Court, one of which judgment is reported in AIR 1991 Bombay Page 27 in the matter of Maria Philomina Pereira v/s. M/s. Rodrigues Construction and the other judgment is reported in 2004 (3) ALL MR. P.388 Shri. Rajaram B. Tiwari v/s The Municipal Corporation of Greater Mumbai and Ors. The Learned Counsel would contend that the said judgments involve cases where the statutory obligations under MOFA and Slum Act were sought to be enforced, and therefore, the valuation as per Section 6(iv) (j) was addressed.

12. Having heard the Learned Counsel for the Petitioners, I have bestowed my anxious consideration to the contentions advanced on behalf of the Petitioners.

13. As indicated above, the question which arises for consideration is whether the Plaintiff is exigible to the payment of the Court fess u/s 6(iv) (j) of the said Act or 6(v) of the said Act? It would therefore be gainful to reproduce the relevant provisions:

6 (iv)(j): for other declarations.--In suits where declaration is sought, with or without injunction or other consequential relief and the subject-matter in dispute is not susceptible of monetary evaluation and which are not otherwise provided for by this Act[ad valorem fee payable, as if the amount or value of the subject-matter was [one thousand rupees].

In all suits under clauses (a) to (i) the plaintiff shall state the amount at which he values the relief sought, with the reasons for the valuation;

6 (v): For possession of lands, houses and gardens: In suits for the possession of land, houses and gardens-according to the value of the subject-matter; and such value shall be deemed to be, where the subject-matter is a house or garden-according to the market value of the house or garden and where the subject-matter is land, and---

(a)---

(b)---

(c)---

14. There can be no gainsaying of the fact that when the Suit is not susceptible to monetary evaluation then the provisions of Section 6(iv) (j) would come into play. The enforcement of the statutory obligations under a statute would be one such situation where the Plaintiff would be entitled to value his Suit u/s 6(iv) (j)

of the said Act. The question is whether in the instant case the Plaintiff is so entitled to value the Suit. Though ostensibly, as contended by the Learned Counsel for the Petitioners the Suit is filed for seeking enforcement of the MOFA obligations. As indicated above, except the valuation clause there is not a whisper in the plaint as regards the breach of the obligation by the Defendant imposed by Section 12 of the said Act. The prayers as noted herein above are revolving around the declaration sought in respect of the agreement in question in the present Suit which is both a negative and positive declaration. This is a case where most unusually a positive declaration is sought by the developer that a declaration be issued that he is ready and willing to comply with the obligations imposed by the agreement. Why such a declaration is sought therefore begs an answer. Hence though by way of prayer clauses (a), (b) and (c) the declarations both positive and negative are sought, it appears that the Suit has been essentially filed for recovery of the possession of the flat in question in each of the Suits from the Respondent who is the Defendant in each of the Suits. The said reliefs are sought after the Plaintiff has terminated the agreements in question in each of the suits. How the possession of the flat was handed over to the Defendant without he making payment, therefore, begs an answer. The said fact by itself casts a suspicion on the nature of the transaction entered into by the Plaintiff and the Defendant. It is impossible to believe that a party hands over the possession of the flat when payment is due from the flat purchaser. Be that as it may, the fact remains that the Plaintiff is seeking recovery of possession of the flat which is the subject matter of each of the Suits. The other reliefs it seems are merely a ruse adopted by the Plaintiff to get the benefit of Section 6(iv) (j) of the said Act.

15. Having regard to Section 6(v) of the said Act, the Plaintiff would be liable to pay Court Fees in terms of the said provision as the Plaintiff is seeking to recover the possession of the flat in each of the Suits. The Trial Court, therefore, rightly came to a conclusion that the Suit is under valued and the Plaintiff has to carry out the correction in the valuation of the Suit in terms of the valuation of the flat.

16. Insofar as the judgments relied upon by the Learned Counsel for the Petitioners are concerned, the first judgment in Maria Pereira's case(supra) concerns a Suit filed by a flat purchaser against the developer for enforcement of the obligation under MOFA. It is in the said context that the learned Single Judge has held that the Suit is liable to be valued u/s 6(iv) (j) of the said Act. The second judgment is the judgment in Rajaram Tiwari's case (surpa) wherein the statutory obligation of the developer in the matter of making allotment of permanent alternative accommodation to a slum dweller was sought to be enforced. It is in the said context that the learned Single Judge's have held that the Suit is not susceptible of monetary evaluation, and therefore, is liable to be valued and payment of Court fees is liable to be paid u/s 6(iv)(j) of the said Act. The facts of the present case stand apart from the facts of the cases in the aforesaid cases (supra). In that view of the matter, there is no merit in each of the above Petitions, they are accordingly dismissed, Rule discharged. The Plaintiff

shall apply to the Trial Court for time to comply with the directions within three weeks from date. The Trial court may pass appropriate orders thereon. If the Plaintiff does not apply for time to comply in terms of this order, the Trial Court may then pass appropriate orders including one dismissing the suits for non-compliance.