

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3630/2012

(Arising out of SLP(C) No. 29620 of 2011)

Chandrika Chunilal Shah

.....Appellant

Versus

Orbit Finance Pvt. Ltd. & Ors.

.....Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. Leave granted.
2. This appeal has been preferred against the judgment and order dated 27.4.2011 passed in Appeal (Lodging) No. 247 of 2011 by the High Court of Bombay confirming the order dated 21.3.2011 of the learned Trial Judge passed on application for interim relief with certain modifications.

3. Facts and circumstances giving rise to this appeal are that:

A. Appellant entered into an agreement dated 3.4.1998 with respondent no. 1 for alternate accommodation whereby the appellant was allotted Unit No. 401 i.e. Suit premises ad-measuring 2680 Sq.fts. built up area subject to payment of Rs.13.50 lacs, nominal fee in lieu of appellant's occupational rights in the godown i.e. the original property. The said agreement was registered on 2.3.2000. The inter-se agreement between the respondent No.1 on one hand and respondent Nos. 2 and 3 dated 7.8.2006 regarding the sale of the part of the accommodation in the same building was served upon the appellant. By that time, the respondent no. 1 had not made any demand from the appellant in terms of the agreement dated 2.3.2000.

B. The appellant filed Short Cause Suit No. 3703 of 2007 seeking reliefs under the provisions of Maharashtra Ownership of Flats Act, 1963 (hereinafter referred as 'MOF Act') before the City Civil Court at Bombay, wherein the respondent nos. 2 and 3 raised a preliminary issue/objection regarding the pecuniary jurisdiction of the City Civil Court which was decided in their favour vide judgment and order dated 20.9.2010, wherein it was held that the said court did not have

pecuniary jurisdiction to try the said suit and, thus, the plaint was returned to the appellant/plaintiff with a direction that it may be presented before the appropriate court as required under Order 7 Rule 10 of the Code of Civil Procedure, 1908.

C. Appellant instituted the Suit No. 259 of 2011 before the High Court of Bombay on Original Side alongwith the application for interim relief. The application was contested by the respondent Nos. 2 and 3 and the trial Judge after considering the matter at length rejected the prayer for appointing the Receiver but considering the fact that the respondent Nos. 2 and 3 had invested a huge amount to the tune of Rs.11.5 crores and having regard to other factors particularly that they tried to find out the encumbrance position from the Sub-Registrar's office but the record was not available, passed certain orders, particularly, permitting the respondent nos. 2 and 3 to create a licence in respect of the built up area, admeasuring 2680 Sq. Fts. (suit property) with a further direction that the third party interest would not be created. The premises could be given on leave and licence for a period not exceeding eleven months at a time subject to the conditions that the licensee would be informed of the pendency of the Suit and no interest shall be created in the premises in favour of the licensee.

Further, the court with the consent of the parties appointed an Architect to identify the built-up area admeasuring 2680 Sq. fts.

D. Aggrieved, appellant preferred Appeal (Lodging) No. 247 of 2011 before the Division Bench against the said order dated 21.3.2011 which has been disposed of with certain modifications in the order of the learned Trial Judge, i.e. the licence fee received from the licensee in respect of the built up area admeasuring 2680 Sq. Fts. on the fourth floor, to be identified by the Architect as directed by the learned Trial Judge, shall be deposited with the Prothonotary and Senior Master of that court. Such an amount was further directed to be deposited in the recurring account in a nationalised bank and the subsequent payments would be deposited directly in the said account under intimation to both the parties as well to the Prothonotary and Senior Master of the Court. It was further clarified that in case of any default, it would be open to the parties to move the court for further directions.

Hence, this appeal.

4. Mr. Krishnan Venugopal, learned senior advocate appearing for the appellant, has submitted that the respondent nos. 2 and 3 did not make proper inspection of the records of the Registrar Office regarding

encumbrance etc. More so, even if the record of the encumbrances etc. in respect of the suit premises was not available in the Sub-Registrar's office, there was no occasion for the learned trial Judge to grant relief as in such a fact-situation, it cannot be presumed that the respondent nos. 2 and 3 had no notice of agreement between Appellant-Plaintiff and respondent No.1. Their agreement with respondent no.1 itself is in respect of the fifth floor in the building and not for the fourth floor where the suit property is situated. Appellant could not pay a sum of Rs.13.50 lakhs in terms of the agreement between the appellant and the respondent no.1 as she had never been asked to deposit the same. The construction of the building is not yet completed and the Completion Certificate has not been issued by the Statutory Authority. Thus, the interim relief as asked by the appellant ought to have been granted. More so, the Architect appointed by the learned trial Judge has identified the appellant's built up area, admeasuring 2680 Sq. Fts. in a corner which is not suitable to the requirement of the appellant. So, the appeal deserves to be allowed and the impugned orders are liable to be set aside.

5. On the contrary Shri K.K. Venugopal, learned senior counsel appearing for the respondent nos. 2 and 3, has vehemently opposed the

appeal contending that it is merely an interim arrangement. The issues including the issue as to whether the respondent nos. 2 and 3 are bonafide purchasers for consideration are yet to be determined. While deciding the application for interim relief only a prima facie view has been taken; the Architect has submitted a report before the learned trial Judge. The appellant has a right to file objections to the same in all respects. The case is yet to be determined by the learned trial Judge thus, no indulgence be granted by the court. Facts and circumstances of the case do not warrant any interference against the impugned orders. The appeal is liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

7. Admittedly, there is nothing on record to show that the construction of the building is complete in all respects and Completion Certificate has been issued by the statutory authority in favour of the respondents. More so, it is nobody's case that the respondent no. 1 had ever applied before the statutory authority for issuance of the Completion Certificate. The issues raised herein are factual in nature and would be determined only after conclusion of the trial and

appreciation of evidence on record. Appellant has agreed before the learned Trial Judge for appointment of an Architect to identify as which area ad-measuring 2680 Sq. Fts. on the fourth floor would be allotted to her. The Architect has submitted the report and the appellant is at liberty to file objections to the said report, if not already filed and the learned Trial Judge would examine/consider the report as well as the objections of the parties and pass appropriate orders. The courts below have not passed any order permitting the respondent nos.2 and 3 to create any third party rights. They have been permitted to grant leave and licence in respect of the suit premises so far as the area 2680 Sq. Fts. is concerned and protected the interest of the appellant directing that licence fee for the premises would be deposited in recurring account with a nationalised bank.

8. In view of the above, the facts and circumstances of the case do not warrant interference by this Court. The appeal lacks merit and is, accordingly, dismissed. However, as the Suit had originally been instituted in the year 2007, we request the learned Trial Judge to conclude the trial expeditiously preferably within a period of one year. We further clarify that the appellant shall be at liberty to raise all his grievances before the appropriate forum at an appropriate stage as this

order is being passed only on an application for interim relief. No order as to costs.

.....J.
(P. SATHASIVAM)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
April 19, 2012



JUDGMENT