



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 5126 OF 2023
IN
EXECUTION APPLICATION (ST) NO. 35 OF 2022

Punjalal G. Dave Realtors LLP
formerly known as Punjalal
G. Dave Realtors Pvt. Ltd.

...Applicant /
Orig. Respondent

In the matter between

Chandini Co-operative Housing
Society Ltd.

...Applicant/Claimant

Vs.

Punjalal G. Dave Realtors LLP
formerly known as Punjalal
G. Dave Realtors Pvt. Ltd.

...Respondent

Mr. Ankit Rajput i/b. Mr. Rutvij Bhatt, for the Original Claimant.
Mr. Chirag Balsara a/w. Mr. Shyam Kapadia, a/w. Ms. Swati
Sawant a/w. Mr. Nirav Doshi i/b. S. K. Legal Associates, for the
Applicant in IA(L)/5126/2023 and Respondent in Execution
Application (ST) No.35/2022.

CORAM : MANISH PITALE, J.
DATE : 22 JUNE 2023

P.C.

. Heard learned counsel for the parties. An interesting
question arises in the present application i.e. whether the Court
could consider a prayer for extension of time to abide by a

stipulation recorded in consent terms on the basis of which this Court had disposed of an earlier application, in the face of opposition by the rival party. In other words, as to whether extension of time to abide by such a stipulation recorded in consent terms could be granted only with the consent of the rival party.

2. The brief facts leading up to filing of the present application are, that disputes between the parties led to an arbitration proceeding, culminating in a consent award being passed by a learned arbitrator. The original claimant initiated execution proceedings before this Court and an interim application was moved for certain reliefs.

3. This was in the context of a development agreement executed between the parties, whereby the applicant herein was supposed to provide tenements of enhanced area to the members of the original claimant society and then to exploit the commercial component thereof. The interim application filed by the original claimant claimed certain reliefs, including a direction for handing over possession and ancillary directions.

4. It appears that when the application i.e. Interim Application No.245/2022 came up for consideration, the members of the original claimant society had already received possession of their respective flats and in that backdrop, consent

terms were executed between the parties on 29/4/2022. These consent terms recorded specific undertakings given on behalf of the applicant herein, including an undertaking that it would obtain full occupation certificate on or before 31/3/2023. On the same day i.e. on 29/4/2022, this Court passed an order disposing of the said interim application as per the consent terms, specifically recording that there shall be an order in terms of the consent terms.

5. It appears that after the said application was disposed of as per the consent terms, certain steps were undertaken by the applicant herein for completing construction of the entire proposed building and obtaining full occupation certification on or before 31/3/2023. But, according to the applicant, due to circumstances beyond the control of the applicant, the said timeline was impossible to comply with and therefore, on 20/2/2023, the present application was filed with a prayer for grant of extension of further six months for obtaining the necessary certificates, completing the construction and obtaining full occupation certificate.

6. The original claimant filed reply to the present application and opposed the prayers made in the present application, inter alia, contending that extension of time, if any, could be granted only with the consent of the original claimant and that the Court would have no power to entertain the prayer made in the present

application.

7. The learned counsel appearing for the applicant submitted that in the facts and circumstances of the present case, as a matter of law, this Court does have power to entertain the prayer for extension of time. It is submitted that the Supreme Court in the case of *Smt. Periyakkal and Ors. Vs. Smt. Dakshyani*¹, distinguished an earlier judgment of the Supreme Court in the case of *Hukumchand V. Bansilal*² to hold that when parties enter into a compromise and invite the court to make an order in terms of the compromise, the Court does retain jurisdiction to extend the timelines in appropriate cases. It is further submitted that the aforementioned judgment was followed by the Supreme Court in a recent judgment in the case of *Kishor Ghanshyamsa Paralikar (Dead) Vs. Balaji Mandir Sansthan Mangrul (Nath) and Anr.*³.

8. It was submitted that once the Court retains power to extend timeline in such a manner, it is for the applicant to demonstrate that there are sufficient reasons for granting extension as prayed. In that regard, the learned counsel appearing for the applicant relied upon letter dated 20/1/2023 signed by the Architect of the applicant, concerned with the said project. By referring to the contents of the said letter, it was submitted that after this Court passed the aforementioned order

¹(1983) 2 SCC 127

²AIR 1968 SC 86

³2022 SCC Online SC 1863

dated 29/4/2022, disposing of the earlier interim application as per the consent terms, efforts were indeed made on behalf of the applicant to ensure that timelines specified as per the consent terms were honoured and the full occupation certificate was obtained before 31/3/2023. But, due to factors indicated in the said letter, which were clearly beyond the control of the applicant, the necessary documents could not be obtained, as a consequence of which, the applicant was constrained to move this Court with the present application seeking extension of time. It is further brought to the notice of this Court that, eventually by notification dated 3/4/2023, necessary permission was granted by the Urban Development Department for the additional area of 35.30 sq. mtr. thereby facilitating the applicant in taking up construction of the additional area and for taking consequent steps. In this backdrop, it was submitted that this Court may allow the present application and although the prayer seeks extension till 30/9/2023, this Court may consider granting further extension, for the reason that the application has come up for hearing today in the month of June 2023.

9. On the other hand, learned counsel appearing for the original claimant vehemently opposed the prayer made in the present application. He submitted that extension of time, if any, could be granted only with the consent of original claimant and this Court ought not to entertain such prayer made on behalf of the applicant. Reliance was placed on judgment of the Supreme

Court in the case of *Gupta Steel Industries Vs. M/s. Jolly Steel Industries Pvt. Ltd. and Anr.*⁴. By relying upon the said judgment, it was submitted that this Court may not interfere with or modify the consent terms executed between the parties on 29/4/2022, leading to disposal of the earlier interim application.

10. It was submitted that even otherwise, if the facts of the present case are appreciated and the conduct of the applicant herein is noted from the time when the parties entered into the development agreement, it would be evident that the applicant is responsible for delay, which resulted in harassment to the members of the original claimant society. It was submitted that the terms agreed in the consent award were not complied with and eventually in the execution application also, the earlier interim application came to be disposed of on the basis of consent terms, the timelines of which have also not been honoured by the applicant herein. On this basis, it was submitted that the present application deserves to be dismissed.

11. It was submitted that if indulgence is shown to the applicant, at this stage, the applicant would continue to adopt the same approach and again seek extension from this Court in future, thereby indicating that this Court ought not to exercise discretion in favour of the applicant.

⁴1996(11) SCC 678

12. Having heard the learned counsel for the rival parties, it would be appropriate to first consider the question as to whether this Court retains the power to entertain the prayer made in the present application.

13. There can be no doubt about fact that as per the consent terms dated 29/4/2022, executed between the parties, specific timelines were identified and the applicant herein undertook before this Court to abide by such timelines. This included obtaining full occupation certificate on or before 31/3/2023. It is also not disputed that the applicant could not abide by aforesaid undertaking and it is for this reason that the applicant moved the present application on 20/2/2023. The question is, whether in the absence of consent of the original claimant society, this Court can consider the prayer for extension made on behalf of the applicant herein. This goes to the very root of the matter, as jurisdiction of this Court is challenged on behalf of the original claimant.

14. The Supreme Court in the case of *Smt. Periyakkal and Ors. Vs. Smt. Dakshyani (supra)*, considered such a situation and referred to its earlier judgment in the case of *Hukumchand V. Bansilal (supra)*. The Supreme Court distinguished the earlier judgment on facts in the backdrop of an order passed on the basis of compromise entered into between the parties and observed as follows:

“4. In the case before us, the situation is totally different. Unlike the case of Hukam Chand v. Bansilal where there was a statutory compulsion to confirm the sale on the dismissal of the application under Order XXI Rule 90 and, therefore, postponement and further postponement of the confirmation of the sale could only be by the consent of the parties, in the case before us, there was no statutory compulsion to dismiss the application under Order XXI, Rule 90 in the absence of an agreement between the parties. The court would have then decided the appeal arising out of the application on the merits. The parties, however, entered into a compromise and invited the court to make an order in terms of the compromise, which the court did. The time for deposit stipulated by the parties became the time allowed by the court and this gave the court the jurisdiction to extend time in appropriate cases. Of course, time would not be extended ordinarily, nor for the mere asking. It would be granted in rare cases to prevent manifest injustice. True the court would not rewrite a contract between the parties but the court would relieve against a forfeiture clause; And, where the contract of the parties has merged in the order of the court, the court's freedom to act to further the ends of justice would surely not stand curtailed. Nothing said in

Hukamchand's case militates against this view. We are, therefore, of the view that the High Court was in error in thinking that they had no power to extend time. Even so, Shri Javali submitted that this was not an appropriate case for granting any extension of time. We desire to express no opinion on that question. The High Court will decide that question. We accordingly, set aside the judgment dated 15th January, 1979, of the High Court and direct the High Court to dispose of I.A. No. VIII in Execution Second Appeal No. 89 of 1974 afresh in accordance with law. The parties will bear their own costs.”

15. The aforementioned position of law, clarified by the Supreme Court, was followed in the case of *Kishor Ghanshyamsa Paralikar (Dead) Vs. Balaji Mandir Sansthan Mangrul (Nath) and Anr. (supra)*. The relevant portion of the said judgment reads as follows :

“11. This section gives to the vendor or the lessor the right to rescission of the contract for the sale or lease of the immovable property in the same suit, when after a suit for specific performance is decreed, if the vendor or the lessor fails to pay the purchase money within the period fixed. This section seeks to provide complete relief to both the parties in terms of a decree of specific

performance in the said suit without having resort to a separate proceeding. Therefore, a suit for specific performance does not come to an end on the passing of a decree and the court which has passed the decree for specific performance retains control over the decree even after the decree has been passed. Section 28 not only permits the judgment-debtors to seek rescission of the contract but also permits extension of time by the court to pay the amount. The power under this section is discretionary and the court has to pass an order as the justice of the case may require. It is also settled that time for payment of sale consideration may be extended even in a consent decree. This Court in Smt. Periyakkal and ors. Vs. Smt. Dakshyani, speaking through Chinnappa Reddy,J. observed that even in a compromise decree, the court may enlarge the time in order to prevent manifest injustice, and to give relief to the aggrieved party against a forfeiture clause.”

16. In this context, the learned counsel appearing for the original claimant relied upon judgment of the Supreme Court in the case of *Gupta Steel Industries Vs. M/s Jolly Steel Industries Pvt. Ltd. and Anr. (supra)*, particularly the observation that as a principle of law, the Court would not be justified in interfering with and modifying the consent decree unless parties agree for the same. This Court is of the opinion, as rightly contended by

the learned counsel appearing for the applicant herein, that the said observation made by the Supreme Court in the case of *Gupta Steel Industries Vs. M/s .Jolly Steel Industries Pvt. Ltd. and Anr. (supra)* ought not to be appreciated in isolation. If the said observation is read in context of the paragraph in which it is stated, it cannot be said that the Supreme Court in the said case departed from the principle recognized in the earlier judgment in the case of *Smt. Periyakkal and Ors. Vs. Smt. Dakshyani (supra)*. In any case, the judgment in the case of *Gupta Steel Industries Vs. M/s .Jolly Steel Industries Pvt. Ltd. and Anr. (supra)* rendered in the year 1996 by a Bench of two Hon'ble judges does not refer to, much less distinguishes, the aforementioned earlier judgment of a coequal Bench in the case of *Smt. Periyakkal and Ors. Vs. Smt. Dakshyani (supra)*. Therefore, the aforesaid contention raised on behalf of the original claimant deserves to be rejected.

17. This Court is of the opinion that in the light of the law laid down by the Supreme Court, this Court retains the power to consider the prayer made in the present application on behalf of the applicant. This is fortified by the specific observation made in paragraph 6 of the order dated 29/4/2022, passed by this Court in the Interim Application No.245/2022, whereby it was specifically recorded that there shall be an order in terms of consent terms, with further observation in paragraph 8 of the said order that all concerned to act on a digitally signed copy of the

order. In other words, it becomes clear that the aforesaid earlier application was disposed of by a specific order of this Court as per the consent terms. The factual position in the present case is therefore, completely covered by the observations made by the Supreme Court in the case of *Smt. Periyakkal and Ors. Vs. Smt. Dakshyani supra*.

18. Having held that this Court retains the power to consider the prayer made in the present application, seeking extension of time, it needs to be examined as to whether the applicant has indeed made out a case with cogent reasons for grant of such extension. This is for the reason that in the very judgment in the case *Smt. Periyakkal and Ors. Vs. Smt. Dakshyani (supra)*, the Supreme Court made it clear that such extension of time, even if the Court has jurisdiction, cannot be granted for the mere asking and it ought to be granted only in rare cases. Therefore, the burden on the applicant in the present case also is heavy, in order to explain as to why extension ought to be granted of the timeline recorded as an undertaking in the consent terms, on the basis of which this Court passed the earlier order dated 29/4/2022. In order to examine the said aspect of the matter, this Court needs to appreciate the material on record to ascertain whether the applicant has shown cogent reasons from 29/4/2022, till the present application was moved on 20/2/2023, as to what prevented it from abiding by the undertaking given to this Court

as per the consent terms. In that regard, the applicant has relied upon the aforesaid letter dated 20/1/2023, of the Architect who is concerned with the aforementioned development project. The contents of the letter are relied upon to demonstrate that there were factors beyond the control of the applicant, due to which the timelines could not be honoured. The relevant portion of the said letter reads as follows :

“We were in regular touch with the officer on special duty to UDD Minister to obtain the endorsement. Further in April 2022 because of the political turmoil in Maharashtra which was started in April and ended in almost October 2022, the signature was got delayed. As you know, after the turmoil new coalition government was formed in October and the UDD minister was elevated as Chief Minister and other concerned officers were also changed. Accordingly the file was sent back to Under Secretary to change the address in the letter to Chief Minister instead of UDD Minister. We had immediately follow up with all the concerned officers and succeeded in sending the file back to Hon. C.M. Office within a short period and finally on the first week of November 2022, file was inward to Chief Officer, C.M. Office who is in charge of taking signature of Hon. C.M. and other formalities/demands were also complied.

Now in principle they agreed to sign the same. It was

supposed to be signed within one month from the inward date, but because of busy schedule and non availability of CM in his place, the signature was got delayed. Also they are considering the files in a first to come first basis. In between the Nagpur session of Assembly was started on 17th of December and ended on last week of December and all concerned officers were stationed there till 31 December 2022 along with Hon. C.M. But the Chief Officer assured us to get it done any time after they came back to Mumbai and were expected the same within the first week of January 2023. Again because of the Hon. C.M's busy schedule, the file is not yet signed and expecting the same in any time and we are following up with Hon. CM's office on a day to day basis to get the file signed.

In this case once plot area correction for the plot under reference is granted by the concerned authorities, we shall be able to complete the construction by utilizing the additional FSI available due increase in plot area. In general case the process of plot area correction shall be completed by the concerned CTS Office through Superintend of Land Records (SLR)/ Collector office, Mumbai Suburban District, which is the sanctioning authority.

Since our plot is part of Town Planning (T.P.) Scheme-III of Ghatkopar, we need to correct the area in T.P. records also, for which we had applied for the same in T.P. Department of MCGM. After completing all the formalities in the TP. Department and formal sanction from Hon Municipal Commissioner, the file had been send to Urban Development Department (UDD) at Mantralaya for final approval/sanction. The file is still pending with Hon. Urban Development Minister (now Chief Minister) for final signature after duly approved by Principal Secretary (UDD).

Since the file had been sent from T.P. Department of MCGM directly to UDD for its final sanction, we have limitations to have personal intervention/follow up in the matter directly and can only request the concerned office to expedite the matter at the earliest possible time. However we are still trying our level best to get it sanctioned through all possible ways and hope we can get it sanctioned in a short period of time. Once it is sanctioned by UDD, we need to comply the formalities at the T.P. Department of MCGM to do necessary correction in the TP. records. After completing the formalities in T.P. Department, again we need to approach the CTS office and office of S.L.R. Bandra to make changes in the P.R. card area.

After completing the above procedures we need to put up amended plans for approval and for issuing further CC and thereafter to start & complete construction work. Once the construction work is completed, we need to apply and obtain full Occupation Permission for the building and all these proceedings will consume considerable time.

19. This Court is of the opinion that the above quoted portion of the said letter does bring out the circumstances which led to delay in processing of the relevant files and papers, for the applicant to proceed with further construction and to honour the timeline of 31/3/2023, for obtaining full occupation certificate. It is significant that having pursued the matter in the aforesaid manner and also having realized that it will not be able to achieve the aforesaid timeline of 31/3/2023, before the timeline was to expire, on 20/2/2023, the applicant filed the present application seeking extension of time. It is crucial that the application was filed before the timeline expired.

20. The documents on record also show that eventually on 3/4/2023, the relevant notification came to be issued whereby the Urban Development Department granted necessary permission for additional area of 35.30 sq. mtr. to enable the applicant to undertake further construction and then to obtain

full occupation certificate. The said notification itself came to be issued after the aforementioned timeline of 31/3/2023 had already expired. The said document is placed on record by way of an additional affidavit.

21. While the original claimant vehemently opposed the prayer made in the present application and reference was made to the conduct of the applicant, from the time when the development agreement was executed, this Court is of the opinion that the original claimant itself having signed the consent terms on 29/4/2022, this Court while considering the prayer in the present application has to consider the conduct of the parties after 29/4/2022. As stated hereinabove, the material placed on record before this Court does indicate that there were indeed circumstances beyond the control of the applicant, including the political turmoil in Maharashtra, due to which the files and papers could not be processed as per expected and reasonable period of time for the applicant to abide by the undertakings recorded in the consent terms. Therefore, this Court is of the opinion that the prayer made in the present application deserves to be granted. It is relevant that the Execution Application is still pending before this Court.

22. This Court is of the opinion that the applicant now has to make an endeavour to forthwith take necessary steps in the matter and to ensure that the construction is completed and full

occupation certificate is indeed obtained before the extended period of time, which this Court is inclined to grant.

23. The learned counsel appearing for the applicant, on instructions, makes a statement that if any pending works still remain as referred to in the consent terms dated 29/4/2022, all steps will be taken to complete such pending works also at the earliest.

24. In view of the above, the application is allowed. The applicant is granted time till 31/12/2023, to complete the construction of the said building and to obtain full occupation certificate. Accordingly, timeline recorded in the consent terms dated 29/4/2022 stands extended till 31/12/2023.

MANISH PITALE, J.