

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

**CONTEMPT PETITION (L) NO. 4934 OF 2022
IN
INTERIM APPLICATION (L) NO. 19494 OF 2021
IN
SUIT NO. 190 OF 2021**

New Rising Sun Co-op. Housing Society Ltd. ... Petitioner/Plaintiff

Versus

K. Bhatia Realtors & Ors. ... Defendants

Mr. Karan Dua i/b Bhandary & Bhandary for the Petitioner/Plaintiff.

Mr. Pratik Amin for Defendant No.1.

Mr. Kunal Bhanage i/b Aksay Pawar for Defendant Nos.2 to 8.

CORAM : R.I. CHAGLA, J.

DATED : 19th OCTOBER, 2022

ORDER :

1 Heard the learned Counsel for the parties. By the order dated 11.10.2022 Mr. Kunal Bhanage, learned Counsel for Defendant Nos.1 and 2 has sought time to file affidavit in reply of Defendant No.1 to the Contempt Petition.

2 Mr. Karan Dua, learned Counsel for the Petitioner/Plaintiff has vehemently opposed for further time to be granted in view of contempt of order dated 22.11.2021 by which Defendant No.2 had to pay outstanding arrears of rent by the extended time which was within a period of one months from the date of said order. He has submitted that till date not a single payment of outstanding rent has been made and that Defendant No.2 was clearly in Contempt of the order. It was made clear in the said order that schedule of payment of outstanding rent as well as future rent shall be set out in affidavit filed by Defendant No.2. It is further observed that by the said order dated 22.11.2021, Defendant No.2 was to pay entire outstanding rent to the members of the Petitioner/Original Plaintiff within a period of nine months from the date of the said order and there appears to be a breach of the order as payments of arrears has not been made by Defendant No.2. Further, this Court had recorded that prior to issue of notice of Contempt against the Defendants, Defendant No.2 was given last opportunity to satisfy this Court that they will comply with said order both in terms of payment of entire outstanding rent as well as future rent apart from completion of the subject building.

3 Pursuant to the order dated 11.10.2022, an affidavit has been filed on behalf of Respondent Nos.2 to 8 in the Contempt Petition. This

has been filed by Respondent No.3 on their behalf. It is stated in the said affidavit dated 18.10.2022 that in order to ensure that the rehabilitation component of the subject project is completed within a reasonable time, the Respondents has roped in a financial investor who will ensure that the necessary funds are made available for completion of the project.

4 Further it is stated in paragraph 6 of the said affidavit that the Respondents with the aid and assistance of their financial investor have substantially completed the construction work towards rehab component of subject redevelopment project and shall be in a position to apply for part occupation certificate from the ground to the 7th floor on or before 31.03.2023 and handover possession of the rehab component upon being granted part occupation certificate for the same. They have placed reliance upon a report prepared by Architect, M/s. Spacera Architects which report is dated 15.10.2022 annexed at Exhibit-A to the said affidavit and which according to them sets out the status of completion of work upto the present date.

5 These Respondents have also stated in paragraph 7 of the said affidavit that Respondent No.1-firm has entered into a settlement with two individual members of the Petitioner Society i.e. 1) Mr. Jitender Singh Talwar and 2) Mr. Vishnu Wadhwani, by which the said members

have agreed to receive an amount of Rs.6,50,000/- towards full and final settlement of the claim towards arrears of transit rent from the period of June, 2019 to December, 2022. Consent letter is at Exhibit-B collectively to the said affidavit. It is noted that in paragraph 2 of the consent letter, the said members of the Society have given their consent in allowing Respondent No.2 to change the constitution of their firm by admitting Mr. Mohammed Ali Mohammed Iqbal Wadia and Mr. Mohammed Iqbal Ali Mohammed Wadia as the new partners therein and upon which the existing partners will retire from the partnership firm.

6 It is further stated in paragraph 9 of the said affidavit that without prejudice to the rights and contentions of these Respondents, they are ready and willing to deposit a sum of Rs.5,00,000/- for each member of the Petitioner Society within a period of one week from today. Further, the Respondents are ready to pay second installment of Rs.8,00,000/- to each member of the Petitioner-Society as full and final settlement towards their claim of arrears towards transit rent i.e. to 12 members of the Petitioner- Society. In paragraph 10 of the said affidavit the Respondents have placed reliance on adverse market conditions and stated that they are in a position to pay only the amounts as mentioned in the said affidavit and are ensuring that the construction of the project is completed as envisaged at the earliest.

7 Mr. Karan Dua, learned Counsel appearing for the Petitioner/ Original Plaintiff has stated that the rent has been outstanding since July, 2019 and which comes to an amount of Rs.4.95 crores till date. The offer of Rs.5,00,000/- for each member of the Petitioner-Society is a mere pretence at settlement when compared to the outstanding rent payable to the members of the Petitioner-Society. He has placed reliance on the prior orders of this Court including the aforementioned order dated 11.10.2022 when this Court had noted that there was a clear breach of order dated 22.11.2021 which had directed Respondent No.2 to pay entire outstanding rent to the members of the Petitioner/Original Plaintiff within a period of nine months from the date of the said order. He has also relied upon Clause 13 of the Assignment Agreement which provides for the same. He has tendered photographs of the rehab component and states that it is far from complete as made out by the Respondents and has disputed the findings in the report dated 15.10.2022 of the Architect M/s. Spacera Architects of the Respondents, which is at Exhibit-A to the said affidavit. He has further submitted that the existing partners of Respondent No.2-Firm are being replaced by new partners and further it is not clear whether any of the existing partners who have committed breaches of the orders of this Court are still partners of the Firm and that would require to be disclosed by these Respondents. He has submitted

that there is the specific provision in the Assignment Agreement that there will be no change in the Constitution including inducting new partners in the Respondent Nos.1 and 2-Firm as well as bringing any financier to finance the project. Any change has to be with the consent of the Petitioner/Original Plaintiff. He has submitted that there is no statement made in the affidavit on behalf of Respondent Nos.2 to 8 as to future payment of transit rent as well as payment of balance arrears and as to when they will be paid as directed in the said orders dated 22.11.2021 and 11.10.2022 passed by this Court. He has accordingly submitted that there is clear contempt committed of the orders of this Court and that appropriate notice be issued for contempt.

8 I have considered the submissions and noted the directions issued by this Court vide orders dated 22.11.2021 and 11.10.2022 by which ample opportunities were given to the Respondents to satisfy this Court that they will comply with the orders both in terms of payment of entire outstanding rent as well as future rent apart from completion of subject building. It is observed that by the last affidavit filed on behalf of Respondent Nos.2 to 8 dated 18.10.2022 there has been a failure to satisfy this Court. However, considering that the Respondents have in paragraph 9 of the said affidavit stated that they are ready and willing to pay a sum of Rs.5,00,000/- to each member of the Petitioner-Society

within a period of one week from today, to test the bonafides of the Respondents, though the amount being offered to each member of Society is a meager amount when compared to the outstanding rent which is from July, 2019 till date and which is an amount of Rs.4.95 crores as claimed by the Petitioner/Plaintiff, an opportunity is given to the Respondents to make payment of the said sum of Rs.5,00,000/- to each member of the Petitioner-Society within a period of one week from today. Further, the Respondents shall also pay the transit rent to each member of the Petitioner-Society for the months of October and November, 2022 on or before 18.11.2022. Any failure to make these payments shall result in notice for contempt being issued to the Respondents under the Contempt of Courts Act.

9 Respondent Nos.2 to 8 shall file further affidavit disclosing the constitution of the partnership firm including as to whether there has been change in the partners of the partnership firm and if so which of the existing partners have been substituted. These Respondents shall also disclose as had been directed in the prior orders of this Court, viz. the manner in which they will pay the outstanding transit rent to the members of the Petitioner-Society as well as future rent and duration of making such payment. Further, they shall also disclose the current status of the rehab component including photographs of internal work having

been carried out with regard to the rehab component. The affidavit shall be filed by the Respondents on or before 18.11.2022.

10 Place the Contempt Petition high on board on 22.11.2022.

(R.I. CHAGLA, J.)