

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

COM SUIT[L] 1703 OF 2018

Inam Abdus Salam and 16 others

.....Plaintiff

V/s

Maharashtra Housing And Area Development

Authority and 5 others

.....Defendants

Before Taxing Master,

High Court Bombay.

Date: 20th October, 2021

For adjudication of court fee.

Mr. K. D. Jha for the Plaintiff .

Mr. S.B. Gore for the State.

: Order :

1. This Hon'ble Prothonotary and Senior Master by an order dated 3/3/2021 has referred the matter to the Taxing Master for adjudication of court fee. The matter was lodged in this office on 17/3/2021. The Plaintiff filed his written submission on 23/3/2021 and additional written submission on 12/10/2021. Ld advocate for state filed his submission on 2/3/2021.

2. It is the case of the Plaintiff that the Plaintiffs are bonafide Occupant/original tenants in the building Known as building No. 78,79 and 80 , Kalyan building, situated at Falkland , Mumbai 400008. These building were chawl type building with common WC and Bath on each floor. In 2006-2007 the defendant No. 6 purchased and acquired the part ownership of the Kalyan building for redevelopment. The tenants has given consent letters in the year 2006. In March 2010 the defendant No. 6 agreed to provide permanent alternate accomodation to each and every eligible tenant of the said building and separate agreements were executed between defendant No.6 and all the tenants including Plaintiffs. In para 14 of the Plaint the plaintiffs have avered that Plaintiffs are seeking performance of statutory obligation of defendant No.6 under the Maharashtra Ownership of flats Act, 1963. The Learned advocate for the Plaintiffs submitted that Plaintiffs have already paid maximum court fee of Rs. 3 lakhs at the time of filling of the above suit. The claims in the suit are not multifarious and hence, section 18 of the Maharashtra Court Fees Act shall not attract the Judgment passed by this Hon'ble Court in Heena Narendra Patel & others reported in 2015(2)Bom.C.R.614. The reliefs sought by the Plaintiffs in the above suit are one fold and no separate or individual claims have been made by the Plaintiffs. He further submitted that he rely upon order in case of this Hon'ble court in Arshad Ishtiyaq Sayed and others V/s Neelkamal Realtors and builders Pvt. Ltd. That is coms(L) 733 of 2018 wherein suit was filed in representative capacity for and on behalf of the 320 owners/occupants/members

of the society had paid maximum court fee of Rs. 3 lakhs. He further submitted that objection raised by the officer of deficit court fee is void ab initio and cannot be sustained and suit is to be numbered without any further payment of court fee.

3. Ld advocate for the State submitted that each plaintiff is required to pay separate court fee on the amount of rent claimed for each plaintiff as per separate and individual agreements and as per exhibit F to the Plaint. There is separate subject matter and separate cause of action in the suit under section 18 of the court fees Act. As per prayer clause F of the plaint, each plaintiff is required to pay separate court fee on their respective share towards damages totalling to Rs. 50,00,00,000/- He further submitted that Plaintiffs is required to pay separate court fee on basis of individual claims of these plaintiffs and agreements for Permanent Alernate Accomodation. He relied upon judgment of this Hon'ble court in case of Heena Patel and others. He further stated that case referred by plaintiff of this Hon'ble court in Arshad Ishtiyaq Sayed and others V/s Neelkamal Realtors and builders Pvt. Ltd. That is coms(L) 733 of 2018 is not applicable in present case. He further submitted that each plaintiff is required to prove their case by leading evidence before the Hon'ble Court. And that each Plaintiff be directed to pay separate court fee as per the valuation of their individual claim amount in the present suit.

4. The Learned advocate for the Plaintiffs has submitted his additional written submission on 12/10/2021. He submitted that judgment

referred by advocate for the state in case of Heena Patel is not applicable in present case and that “Ratio-decidenti” are entirely different. The present case is for specific performance and no individual claim for damages has been separately. He further submitted that plaintiff’s written arguments are based on judgment passed in a suit filed in a representative capacity on behalf of approximately 332 flat owners of the society.

5. The Learned advocate Plaintiff has requested for referring the matter to the court on the issue of difference of opinion between the Judges observation in the above referred judgment. I do not accept the said request . It is for the plaintiffs to move the matter to Hon’ble Court in this regard if they so desire.

6. I have considered all the above submission and the copy of the plaint submitted by the Plaintiffs. It is to be noted that in para 13 of the Plaint, the plaintiffs have stated that separate permanent alternate accommodation was executed between the Defendant No.6 and all the tenants including the Plaintiffs herein. In para 14 of the plaint the plaintiffs have stated that the plaintiffs are seeking performance of defendant No. 6’s statutory obligation under Maharashtra Ownership of Flats Act. The prayer clause (a) is for arrears of rent towards temporary accommodation. The prayer clause (b) is for specific performance of the legal liability and responsibility of defendant No.6. The prayer clause (c) is for declaration that irrevocable consent given in 2010 for redevelopment by plaintiffs to defendant No.6 are void. The prayer clause (d)

for providing Permanent accomodation to the Plaintiff in new building as per D.C.Regulations. The prayer clause (e) is an ancillary prayer to the above prayers. The prayer clause (f) is an additional prayer for damages to the Plaintiffs a sum of Rs.50 crores.

7. The case referred by the Plaintiffs in Arshad Ishtiyaq Sayed and others V/s Neelkamal Realtors and builders Pvt. Ltd in coms(L) 733 of 2018 will not be applicable in this case. This case is not in representative capacity. Each plaintiff has separate cause of action and will have to prove his own case.

8. Therefore it is clear that the main prayer is for specific performance of liability and responsibility of defendant No.6. The claim of the plaintiff is based on the Permananet alternate Accomodation agreements, MOFA Act and D.C. Regualtions. Therefore the prayer clause (b) is main prayer for specific performance of agreement for Permanent Alternate Accomodation under MOFA Act and it is required to be valued under section 6(iv)(j) of Court fees Act in view of Judgement in Maria Philomina Pereira Vs. Rodriques Construction. The prayer clause (a),(c),(d),(e) are ancillary prayers. The prayer clause (f) is for damages which is not an alternate prayer. There is separate agreement for Permanent Alternate Accomodation agreement with each Plaintiff. Therefore there is separate cause of action for each Plaintiff. The case of each plaintiff is a distinct subject . Therefore each plaintiff will have to prove his claim separately. The Plaintiffs have also calculated the separate rent

payable to each Plaintiff at Exhibit "F". Therefore Plaintiffs are required to calculate separate share of each Plaintiff for damages out of total amount of damages of Rs.50 crores and required to pay court fee accordingly.

Taxing Master