

ITEM NO.1

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

I.A.Nos.177, 178 & 179 in CIVIL APPEAL NO. 5559 OF 2001

With I.A.Nos.180 & 181 in I.A.No.177

JAMSHED HORMUSJI WADIA

Appellant (s)

VERSUS

BOARD OF TRUSTEES, PORT OF MUMBAI & ANR.

Respondent(s)

(For clarification of the judgment dated 13.1.2004 and for permission to file affidavit and directions and permission to file supplementary affidavit in I.A.No.177)

With I.A.No.182 in I.A.No.177

(For seeking permission to replace pages)

With I.A.No.183 in I.A.Nos.177-178

(For c/delay in filing replies)

Date: 09/01/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. F.S. Nariman, Sr. Adv.

Mr. P.H. Parekh, Adv.

Mr. D.P. Mohanthy, Adv.

Mr. Viren Asan, Adv.

Ms. Natasa Sharangdhar, Adv.

For Respondent(s) Mr. R.N. Trivedi, Sr. Adv.

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Ms. Shweta Garg, Adv.

for M/s J.B. Dadachanji & Co., Adv.

Mr. Vimal Chandra S. Dave, Adv.

Mr. P.N. Gupta, Adv.

Mr. S. Udaya Kumar Sagar, Adv.

Ms. Sujata Kurdukar, Adv.

Mrs. Ruby Singh Ahuja, Adv.

Mrs. Nandini Gore, Adv.

Mr. E.C. Agrawala, Adv.

2

Mr. Mahesh Agarwal, Adv.

Mr. Rishi Agrawal, Adv.

Mr. Jay Savla, Adv.

Mr. S.V. Deshpande, Adv.

Mr. D. Mahesh Babu, Adv.

Mr. S.R. Setia, Adv.

Mr. S.U.K. Sagar, Adv.

Mr. P. Venugopal, Adv.

Mr. E. Venu Kumar, Adv.

Mr. Harshad V. Hameed, Adv.

for M/S. K.J. John & Co., Adv.

Mr. Rajesh Kumar, Adv.

Ms. Sunita Sharma, Adv.

Mr. Pawan Kumar, Adv.

UPON hearing counsel the Court made the following

O R D E R

I.A.NO.177/2004:

This application has been filed by BPT Residential Tenants Association

seeking clarification of direction as contained in paragraph 40(ii) of the decision of this

Court dated 13th January, 2004 in Jamshed Hormush Wadia Vs. Board of Trustees,

Port of Mumbai and Anr., reported in (2004) 3 SCC 214. Para 40(ii) reads as under:-

"40(ii) The 'Compromise Proposals' as approved by the Board of Trustees of the Port of Mumbai in their meeting held on 13.8.1991 which are very fair, just and reasonable, subject to the modification that the revision in rent from 1.4.1994 shall be on the basis of rates of return at 10% for non-residential uses and 8% for residential uses, based on Kirloskar Consultants' report, instead of 15% and 12% respectively as was suggested in the 'Compromise Proposals'; the 'Compromise Proposals' so modified shall bind the parties, and all the lessees even if not parties to these proceedings in view of the proceedings taken by the High Court under Order 1 Rule 8 CPC."

The issue before the Court was regarding fixation of rent of the various class of

3

accommodation, which had been subject-matter of various litigations. In this

application, we are only concerned about the clarification sought in respect of the

residential accommodation. The term "Compromise Proposals" in afore-quoted

paragraph seems to be an error when examined with reference to record including

"without prejudice" proposal, which was given. In fact, the term should have been the

'Kirloskar Report' and not the 'Compromise Proposals'. However, nothing much hinges

on that. It does appear that the Board of Trustees - respondent herein as far back as

13th August, 1991 accepted the Compromise Proposals as noticed in para 6 of the

reported decision. According to it as far as residential accommodation is concerned, it is

stipulated 'letting rate' of 20% in the manner noticed in that paragraph.
Para 6(iii)

reads as under:-

"6(iii) Letting rates for 'non-home occupation' per sq. metre of floor

space per month of built-up area (as derived from valuation by Kirloskar

Consultants) shall be as under for the period 1.10.1982 to 30.9.1992:

- | | | |
|-----|--|----------|
| (a) | Sassoon Dock Estate: | Rs.22.03 |
| (b) | Wellington & Appollo Reclamation Estates: | Rs.26.91 |
| (c) | Ballard and Mody Bay | |

| | | |
|-----|-------------------------------|----------|
| | Estates: | Rs.24.00 |
| (d) | Elphinstone Estates (TPS): | Rs.14.44 |
| (e) | Bunders South: | Rs.21.38 |
| (f) | All other estates: | Rs.12.66 |

Letting rates for 'home occupation' may be at 20 per cent of the above rates.

Letting rates for future years from 1.10.1992 to 30.9.2012 for the 'non-home occupation' and 'home occupation' shall be as given in the annexures.

Notwithstanding the fixation of letting rates for 20 years for good and sufficient reasons, the Board may review and revised the letting rates."

The above rates, it is not disputed, are 15%. If 20% of 15% is calculated, the rate for home-occupation, i.e., residential, which we are considering, would come to 3%.

4

But according to paragraph 40(ii) above noted, the direction for payment by the residential occupant is 8% for residential uses. The calculation of 8% would mean that the aforesaid 3% would get enhanced by about 2.66 times. It may be noted that even

when the matter was pending before the High Court, the stand of the respondent-Board

was that the Compromise Proposals is fair and reasonable and has been arrived at

taking into account all the relevant circumstances. That the Compromise Proposals was 20% of the 15%, i.e., 3% as above noted. The entire tenor of the judgment shows that the Court was not intending the residential users to pay more than what was accepted by the Board. That becomes more apparent when examined with reference to the relief given to the non-residential users. Having heard learned counsel for the parties, it seems evident that regarding applicants clerical error has crept in the judgment while issuing directions as in paragraph 40(ii), the effect of which is that instead of giving relief to residential users, they would be required to pay more than 2½ times as above noted, which was never the intention.

Be that as it may, it is not possible at this stage to accept the prayer in the application in its totality by directing that the residential users shall pay 20% of the 10%. It would be just and reasonable if residential users are required to pay 20% of the 15%, which was the initial proposal as noted in para 6(iii) of the judgment with the periodical increase.

In this view, para 40(ii) of the judgment is thus clarified in the term above noted. The residential users would not be required to pay 8%. They would be required to pay 20% of 15% with periodical increase as was the compromise formula accepted on 13th August, 1991.

The application stands disposed of accordingly.

I.A.NO.178:

The applications filed upto and including 24th February, 2004 would be

treated to have been filed within six weeks period fixed in the decision of this Court

5

dated 13th January, 2004 in Jamshed Hormush Wadia (supra). I.A. is disposed of

accordingly.

Rest of the I.As. are allowed.

(P.D. Balodi)

Court Master

(V.P. Tyagi)

Court Master