

CASE NO.:
Appeal (civil) 7785 of 2002

PETITIONER:
RADHIKA KAPUR & ORS.

RESPONDENT:
M/S D.L.F. UNIVERSAL LTD.

DATE OF JUDGMENT: 17/12/2004

BENCH:
P.VENKATARAMA REDDI & A.K. MATHUR

JUDGMENT:
JUDGMENT

INTERLOCUTARY APPLICATION NO.5/2004

P. VENKATARAMA REDDI, J.

This appeal by special leave is preferred against the order dated 4.9.2000 in U.T.P.E. No. 206 of 1998 passed by the MRTP Commission by which the interim relief sought for by the appellants was rejected with certain observations. In the application/complaint filed under Section 36A of the Monopolies and Restrictive Trade Practices Act (for short 'Act'), the main relief sought for was to restrain the respondent from cancelling the allotment of the apartments in D.L.F. Beverly Park, Gurgaon for non payment of the extra amount demanded from the appellants by the letter dated 2.6.1997 etc. The immediate provocation for filing the complaint seems to be the letter issued by the respondent-Company on 18.9.1998 calling upon the appellants to pay the escalated charges by 10th October, 1998 failing which, the respondent threatened to cancel the allotment without further notice. One of the other reliefs sought for was to direct the respondent to handover possession of the apartment forthwith. The last prayer was to inquire into the unfair trade practices adopted by the respondent and to direct the respondent to desist from such action in future. Initially the appellants filed a miscellaneous application under Section 12A of the Act seeking stay of demand of extra charges and to restrain the respondent from cancelling the allotment of the apartments for non-payment of the extra amount demanded. This application was rejected on 23.4.1999. The Commission observed that the propriety or otherwise of demanding extra charges will have to be decided in the main enquiry and that there was no prima facie ground to grant interim relief, especially, having regard to the fact that the applicants were protected against cancellation of allotment by virtue of the undertaking given by the respondent in this behalf.

Another miscellaneous application was filed sometime later purportedly under Section 12A of the Act to handover the possession of the flat. It was contended therein that in spite of depositing an extra amount over and above the instalment payable as per the agreement, the respondent had refused to handover the possession. This application having been rejected by the impugned order, the SLP was filed. Though Section 55 of the Act provides for an appeal to this Court against an order made by the Commission under Section 12A on one of the grounds specified in Section 100

CPC, the appellants, for reasons undisclosed, have chosen to by-pass that remedy and invoked the jurisdiction of this Court under Article 136 of the Constitution.

The Commission observed that the case was ripe for final disposal and no immediate irreparable loss will be caused if the interim relief prayed for was not granted, especially having regard to the fact that the interests of the applicants was sufficiently protected by the earlier order by placing a restraint on the cancellation of allotment. The Tribunal referred to the interim order of this Court in certain other matters concerning some other parties who filed similar complaints before the Commission. That order was passed in C.A. No. 6502-6520 of 1998. In that case, while issuing notice, interim order was passed by this Court that the possession shall be handed over pursuant to the clarificatory order passed by the Commission on payment of 75% of the extra charges demanded and the remaining 25% to be deposited with the Registry of the Court. Subsequently, the said appeals were disposed of by passing an order based on the consent of the parties that the respondent herein (appellant in C.A.No. 6502-6520 of 1998) could withdraw the amounts deposited without prejudice to the respective contentions urged before the Commission. A perusal of the impugned order dated 4.9.2000 discloses that the appellants were not prepared to conform to the conditions imposed in the interim order of this Court in the civil appeals referred to supra on the ground that the said case was distinguishable. However, the Commission found, prima facie, that there was no distinguishing feature. After the miscellaneous application was disposed of, considerable progress was made in regard to the enquiry and some witnesses were also examined. On 22.11.2002, this Court granted leave and the original record has been requisitioned. Therefore, the further enquiry has not concluded. While so, the appellants filed I.A.No. 4 of 2003 in the first instance seeking an interim order to direct the respondent to handover the possession of flats on the appellants furnishing adequate security for the balance amount. This I.A. was rejected by this Court by an order dated 2.12.2003. Thereafter, the appellants have made another endeavour to get possession of the flats by filing the present application i.e. I.A. No. 5 of 2004. The relief sought for is to direct the respondent to give the possession of the respective apartments as per agreement and to stay the escalation charges and interest on the delayed payment as demanded by the respondent. As the point arising in I.A.5 and the main appeal is practically the same, they are being disposed of by this order.

The latest position regarding the amounts payable as per the respondent's demand is given at Page 68 of I.A.No.5. There are six items in the tabular statement as shown below:

- 1
Dues towards basic sale price
- 2
Dues towards extra charges
- 3
Delayed interest on basic sale price
- 4
Delayed Interest on extra charges
- 5
Stamp duty and registration charges
- 6
Maintenance charges

According to the above statement, roughly Rs.27 lakhs is payable by each of the appellants. The learned counsel for the appellant submits that apart from the sums at items 1 & 5 which are admitted, the appellant is prepared to pay the extra charges (item 2) of Rs.8,78,905/- (in one case it is Rs.8,51,116/-) 'without prejudice' and that it is just and proper to direct the delivery of possession subject to the final outcome of the enquiry. The learned counsel for the appellant mainly assailed the propriety of demanding the interest on extra charges, that too at a high rate, when the extra charges themselves is the subject-matter of dispute. He also demurred to the demand of maintenance charges, even without delivery of flat. We put it to the respondent's counsel that the respondent may receive the amounts due towards items 2 & 3 subject to the deposit of amount payable under the item No.4 i.e. delayed interest on extra charges with the Commission and then deliver possession, without prejudice to the respective contentions. The learned senior counsel for the respondent has however not agreed for this course and he wants the full payment to the last paisa before possession is handed over. The learned counsel for the respondent submits that the Commission had no jurisdiction to direct possession to be delivered by way of temporary injunction under Section 12A and the Commission has rightly declined such relief. The course of enquiry has been virtually stalled by the appellants by making persistent efforts to get interim relief in some form or the other. Without going into the larger question whether the Commission could straightaway pass an order under S.12-A directing possession to be handed over on the payment of balance sale price, we are not inclined to interfere with the impugned order of the Commission. In declining to grant the relief of possession by way of interim measure, the Commission cannot be said to have committed a jurisdictional error or patent illegality. There is no perversity, nor irrelevant reasoning which makes the impugned order vulnerable to attack. No irreparable damage is caused to the appellants by declining the mandatory injunction to put the appellant in possession even before the enquiry is concluded, as rightly held by the Commission. Moreover, it is pertinent to note that no offer was made before the Commission nor in the SLP filed in this Court for payment of extra charges, 'without prejudice'. Above all, I.A. No.4 seeking substantially the same relief was dismissed by this Court. Viewed from any angle, we do not find any valid ground to disturb the impugned order of the Commission in exercise of the jurisdiction under Art. 136, though we do feel that the respondent has exhibited somewhat unreasonable attitude in spurning the offer made in the course of hearing. I.A. No.5 as well as CA No. 7785/2002 are therefore dismissed. No costs. The enquiry by the MRTTP Commission shall be proceeded with expeditiously. The Registry shall send back the records to the Commission immediately.