

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**I.A. No. 1727 of 2019
IN
Contempt Application (MRTP) No. 01 of 2013
AND
Compensation Application (MRTP) No. 114 of 2008**

IN THE MATTER OF:

Aasim Mohammad

...Appellant

Vs.

**Ashley Concessio (Proprietor),
M/s. Pragati Land & Housing Corporation**

...Respondent

Present: For Appellant: - Mr. Aasim Mohammad, Advocate.

O R D E R

08.07.2019— Compensation Application No. 114 of 2008 was disposed of by the Competition Appellate Tribunal, New Delhi by order dated 7th December, 2010, which reads as follows:

“This compensation Application has been filed under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the ‘Act’).

2. The background facts as highlighted by the applicant are as follows:-

M/s. Pragati Land & Housing Corporation (hereinafter referred to as “Respondent”) is a proprietary/

partnership concern having its office at Ganegaon, Chincholi, Post Kadaav, Bhivpuri Station (W), Near Karjat, Mumbai; and is inter-alia engaged in the business of booking/ allotment & sale of plots etc. with complete facilities/ amenities to the buyers under the developed scheme of 'Pragati Balley' at Mumbai & surrounding areas.

The Respondent, through one of its own representative named Shri Anil, approached the Applicant personally on its behalf on 26.09.2006 alluring the Applicant to invest his liquid assets to buy a plot measuring of 242 Sq. Yars @Rs. 1,000/- per Sq. Yd. at the site scheme of 'Pragati Valley' being developed at Mumbai providing extra ordinary facilities/ amenities.

In the wake of its oral representation/ assurance made on 26.09.2006, the Respondent's

representative demanded an amount of Rs. 1,21,000/- i.e. 1st installment for the aforesaid plot. The Applicant issued and delivered a D/D dt. 26.09.2006 of Rs. 1,21,000/- towards 1st installment in favour of the Respondent.

The Respondent on receipt of the payment of Rs. 1,21,000/- through D.D. dt. 26.09.2006 towards 1st installment didn't bother to dispatch/ send the acknowledgement receipt acknowledging the receipt of the said heavy amount and did not give any reply despite telephonic reminders and was quite silent; and months upon months passed without any confirmation. However the applicant became suspicious of the Respondent's bad conduct and false representation/ promise made. The Applicant reminded over phone about non-receipt of any information. Even

then the Respondent was silent deliberately with intent to defraud the Applicant without sending any reply. In addition to it, the Respondent was also silent for not giving any confirmation in respect of allotment letter and other documents relating to transfer of plot in favour of the Applicant and map of the plot and true and correct position of progress of the Respondent's representation. Thereafter the Respondent sent the brochures/ letter dt. 12.03.2007 describing the details of so-called assured/ promised facilities together with back dated receipt of payment dt. 28.10.2006 and allotment letter dt. 15.02.2007.

In the meanwhile, the Respondent alluring the Applicant sent the offer letter(s) dt. 14.03.2007 about selling/ transfer of the allotted plot to the Applicant to new buyers at the

same price/ rate which the Applicant had purchased whose mobile nos. are given at the bottom of the said offer letter, whereas the rates were increased.

In the wake of Respondent's offer letter dt. 14.03.2007, the Applicant contacted the proposed buyer over mobile nos., given at the bottom of the said letter, but no was available there, hence the Applicant was precluded from selling the plot allotted to him, after putting strenuous efforts by the Applicant on the advice of the Respondent. But at the same time one Shri S.K. Malhotra an agent/ representative of the Respondent replied that Respondent had sold the Applicant's plot to someone else (through some broker after collecting premium thereon) without obtaining prior consent of the Applicant and thus the Respondent

earned huge profit at the cost of the Respondent. Because of such mischief committed by the Respondent, the Applicant had no any other alternative/avenue except to ask for refund of his money. However Applicant declined to do so. On the failure to fulfill the Respondent's representation/ statement commitment, the Applicant requested to get the refund of his amount. With an oral advice of the Respondent, the Applicant addressed his Application letter dt. 01.12.2007 duly supported by requisite enclosures seeking his refund of his paid amount to the Respondent. On receipt of the said application duly supported by the desired documents, the Respondent promised/ assured the Applicant that he would get the cheque of refunded amount in a month's time.

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But thereafter Respondent on receipt of the application & copies of documents, remained silent. The Respondent with intent to cause further delay in the payment, again committed mischief in the pretext that 'no original receipt' was supported with the application letter. Even after furnishing the original receipt of allotment letter dt. 28.10.2006, the Applicant was informed over phone that he would be getting refund amount by cheque in March, 2007. The Respondent intentionally delayed 6 months in sending the refunded amount cheque on 01.05.2007.

After presentation of refund amount cheque dt. 01.05.2007 on three occasions, with the applicant's banker, the said cheque was not honoured by the Respondent's

*banker thrice with nothing
“INSUFFICIENT FUNDS”.*

3. After issuance of notice the respondent never appeared, though notice was served. Hence, the respondent was set ex-parte vide order dated 15th December, 2008. It is evidently clear from the evidence on record that the applicant had deposited Rs. 1,21,000/- on 26.09.2006. He is entitled to refund thereof along with appropriate rate of interest. Considering the period from which the deposit is made and the prevalent rate of interest paid by the Banks on long term deposits, the applicant would be entitled to interest @ 15% while fixing the rate, we have also taken note of the fact that cheque issued by the respondent was dishonoured thrice. The deposited amount shall be paid by the respondent along with interest within a period of three months from today. The Compensation Application is disposed of. However, the Respondent shall file an affidavit indicating compliance of order within two weeks of the date of payment.”

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2. The order of the Competition Appellate Tribunal having not complied, the Applicant filed Contempt Application No. 01 of 2013 before the Competition Appellate Tribunal wherein the Competition Appellate Tribunal on 8th March, 2013 ordered as follows:

“This is a contempt application. This Tribunal by an order dated 07.10.2010 directed the refund of Rs. 1, 21,000/- along with interest @ 15% per annum w.e.f. 26.09.2006 till the date of payment. By this application, the contempt applicant wants to suggest that there is a contempt committed of this Tribunal. We do not think so because the contempt petitioner should have straightaway got the decree executed through the District Judge, Pune, within whose Jurisdiction, the cause of action has taken place. We, therefore, direct that this order dated 07.10.2010 shall be transmitted to the District Judge, Pune, who will treat it as a decree and proceed to execute it through himself or through some other officer. With

this, the contempt application stands disposed of.”

3. The Applicant- Mr. Aasim Mohammad submits that when he moved before the District Judge, Pune, Maharashtra for execution of the decree in terms with the order passed by the Competition Appellate Tribunal, the Hon'ble District Judge observed that the proprietary/partnership firm having its office at Ganegaon, Chincholi, Post Kadaav, Bhivpuri Station (W), Near Karjat, Mumbai, falls within the jurisdiction of District Judge, Raigad, Alibag, Maharashtra.

4. Thereafter, when the Applicant moved before the Hon'ble District Judge, Raigad, Alibag, Maharashtra, he was informed that without correction of the order dated 8th March, 2013, the court of the Hon'ble District Judge, Raigad, Alibag, Maharashtra, cannot take up the matter.

5. Taking into consideration that the Applicant is running from pillar to post since the order of decree was passed in his favour on 7th December, 2010 and the property comes within the jurisdiction of the District Judge, Raigad, Alibag, Maharashtra, we modify the order dated 8th March, 2013 to the following extent.

In the 11th and 15th line of the said order (see order reproduced supra), in place of 'District Judge, Pune', it should be read as 'District Judge, Raigad, Alibag, Maharashtra'.

6. The order dated 8th March, 2013 passed by the Competition Appellate Tribunal stands modified to the extent above.

A corrected copy of the order dated 8th March, 2013 passed by the Competition Appellate Tribunal be issued, notified and free copy of the same be handed over to the Applicant. The Applicant/ Petitioner now may get the decree executed through the District Judge, Raigad, Alibag, Maharashtra within whose jurisdiction the judgment debtor resides.

I.A. No. 1727 of 2019 stands disposed of.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice A.I.S. Cheema)
Member(Judicial)

(Kanthi Narahari)
Member(Technical)

Ar/g