

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

MISC. APPLICATION NO. 711 OF 2023 [Arrest Warrant]
WITH
MISC. APPLICATION NO. 713 OF 2023 [Interim Relief]
ALONG WITH
Ex. NO. 19 OF 2021
IN
APPEAL NO. AT006000000031769

Miss. Smita B. Kaskar

... Applicant

-VS-

Nirmal Lifestyle Ltd.

... Non-applicant

Mr. Nitin Kaskar, Advocate for Applicant.

Mr. Dharam Jumani a/w. Mr. Tushar Kadam, Advocate for Non-applicant.

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &

DR. K. SHIVAJI, MEMBER (A)

DATE : 15th JANUARY, 2024

(THROUGH VIDEO CONFERENCE)

Heard learned counsel for the parties.

2] Advocate Mr. Dharam Jumani a/w. Mr. Tushar Kadam submits that an undertaking dated 04.01.2024 has been filed on 11.01.2024 and also served to the other side. This undertaking is in conformity with the order of this Tribunal dated 22.12.2023. Advocate Mr. Dharam Jumani further submits that a demand draft of ₹ 4,31,580/- has also been deposited in the Tribunal towards the payment of the dues towards



satisfaction of the judgment decree till December 2023. Hence, there is no amount pending towards the compliance of the judgment decree as on 31st December 2023.

3] Advocate Mr. Nitin Kaskar, learned counsel appearing for Applicant submits that there are certain shortcomings/ deficiencies in the undertaking dated 04.01.2024 filed by Non-applicants. However, on receipt of ₹ 4,31,580/- demand draft from the Tribunal, there will be no amount remains to be paid towards the satisfaction of the judgment decree dated 05th March 2021 towards payment to Applicant as on December 31st, 2023.

4] Learned counsel appearing for Applicant further submits that the deficiency in the undertaking more particularly, in its para 3, instead of compliance of the order of the judgment decree, it is written as "30.08.2023". Hence, it requires to be replaced by the judgment decree.

5] He further submits that para 5 of the order of this Tribunal dated 22.12.2023, clearly stipulates for the payment of ₹ 5,000/- additionally for every month of delay in payment of the delay interest as per the judgment decree. However, this amount is not written anywhere in the undertaking. He further submits that even though Non-applicant has three directors namely Mr. Dharmesh Jain, Mr. Rajeev Jain and Mr. Ramesh Patankar, names of only two directors namely Mr. Dharmesh Jain and Mr. Rajeev Jain are written. So, name of Mr. Ramesh Patankar is also



required to be written and signed/executed.

6] Learned counsel for Applicant submits that Applicant is entitled as per the judgment decree for the delay interest till the date of the actual possession.

7] Perusal of the order dated 04.01.2024 stipulates for the judgment debtor to submit undertaking strictly in accordance with the order dated 22.12.2023 without any deviation.

8] In view of the peculiar facts and circumstances of the case, Non-applicants are directed to file proper undertaking by incorporating inter alia in para 3 of the undertaking as "judgment decree" in place of 30.08.2023, also to add the undertaking with respect to the payment of ₹ 5,000/- per month to be paid if there is any delay in payment of the interest for every month of delay in the revised undertaking with the signature of all the three directors along with proper notarization.

9] Learned counsel appearing for Non-applicants upon instruction have clearly shown their intention by depositing the demand draft of ₹ 4,31,580/- towards the satisfaction of the judgment decree, which covers dues as on 31.12.2023 and this is an admitted facts among the parties as per the order of this Tribunal on 04.01.2024 and undertaken to continue to pay delay interest till possession and to satisfy judgment decree without any deviation.



10] Advocate Mr. Dharam Jumaní upon instructions further undertakes to file the revised amended undertaking duly notarized strictly in accordance with the order dated 22.12.2023 and after incorporating above deficiencies as mentioned herein above, by tomorrow i.e. on January 16, 2024 in the Tribunal and serve the same to other side.

11] In view of the undertaking upon instruction given by Advocate Mr. Dharam Jumaní, the order of this Tribunal sent to the bank for freezing the bank account of the judgment debtor will stand vacated upon receipt of the revised undertaking, failing which freezing of the bank account will continue.

12] Registrar to issue appropriate directions to the concerned bank.

13] Stand over to 11th March, 2024.


(DR. K. SHIVAJI)


(S. S. SHINDE, J.)