IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

943 CIVIL APPLICATION NO. 3482 OF 2024
IN WP/244/2024

Sayyad Gazanfaruddin Sayyad Habibuddin (as Per Writ Petition) Sayyed Gajanfaroddin Sayyed
VERSUS
Sayyad Kausar Sayyad Pasha Mazhar Jahagirdar And Ors
...
Advocate for Applicant : Mr. Abhay G. Deshmukh (Mogarekar)
Advocate for Respondents No.2,3,4 : Mr. B. R. Rathod
Advocate for Respondent No.5 WP : Mr. S. N. Patne
Advocate for Petitioner in WP : Mr. P. B. Rakhunde

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WITH
WRIT PETITION NO. 244 OF 2024

WITH
WRIT PETITION NO. 9167 OF 2023

WITH
CIVIL APPLICATION NO. 8172 OF 2024
IN WP/9167/2023

WITH
CIVIL APPLICATION NO. 8171 OF 2024
IN WP/244/2024

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CORAM : ARUN R. PEDNEKER, J.
Dated : August 09, 2024

ORDER :-

1. Heard learned Counsel for both sides.

2. In the instant case execution proceedings are filed in terms of the compromise decree passed in Special Civil Suit No.06/2015, dated 06/03/2019. In the execution proceedings, the objections were raised by

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the Judgment Debtor No.1 and 3. The objections raised were rejected by the Executing court holding that the Record shows that during the pendency of the suit, compromise took place between the parties, and in the compromise, there is an admission that the plaintiffs are owners and possessors of the suit property and the plaintiffs by way of sale deed sold the suit property to defendants No.1 to 4, and accordingly possession was handed over to the defendants. Thereafter, defendants No.1 to 4 by registered sale deed sold the said property to defendants No.5 to 66, and handed over the possession as the compromise took place between the plaintiffs No.1 to 4 and defendants. Plaintiffs had withdrawn the suit against defendants No.5 to 66 unconditionally. In the compromise, the defendants No.1 and 3 had agreed to pay consideration of Rs.1,33,00,000/- to the plaintiffs and out of consideration Rs.1,33,00,000/-, the Decree Holders have received Rs.1,03,00,000/- lakh from the Judgment Debtors No.1 and 3, and an amount of Rs.30,00,000/- is due from the Judgment Debtor. As such, an execution petition is filed for the recovery of the balance amount.

3. Cheques issued towards the payment are also returned back to the Decree Holder No.1. In view of the same, the objection raised by the Judgment Debtor was rejected by the Executing Court dated

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29/03/2023. Against the dismissal of the objections of the Judgment Debtor, writ petition is filed in this Court bearing Writ Petition No.9167/2023, and this Court by order dated 28/07/2023 issued notice to the respondent, however no interim relief was not granted by this Court even on subsequent dates. Thereafter, the Executing Court in the same execution proceedings passed a consequential order dated 11/12/2023 directing as under : -

> "मौजे नळदुर्ग, ता. तुळजापूर, जि. उस्मानाबाद येथील नगर परिषद हद्दीतील जुना घर क्र. ७२६ व १०२५ व नवीर घर क्र. ८५९ सदर जागेचे दोन भाग असून भाग क्र.१ याची लांबी पूर्व—पश्चिम ५८ फुट व रुंदी दक्षिणोत्तर ३३ फुट असून त्याचे एकूण क्षेत्रफळ १७७.८८ चौ.मी. आहे. भाग क्र.२ याची लांबी दक्षिणोत्तर १९ फुट व रुंदी पूर्व—पश्चिम १५.५० फुट असून त्याचे क्षेत्र २७.४६ चौ.मी. आहे. या दोन्ही भागाचे एकूण क्षेत्र २०५.३४ चौ.मी. असून सदर जागेमध्ये ५० चौ.मी. चे चौदीवारी दगड मातीचे जुने बांधकाम असून उर्वरीत १५५.३४ चौ.मी. जागा खुली जप्त करण्यात येते."

4. The Executing Court directed that the Judgment Debtors House No.859 be attached. Against which a writ Petition No.244/2024 is filed in this Court in which the petitioners contended that they have paid substantial amount and that the Rs.30,00,000/- balance amount would be payable and that the Decree Holder is entitled to receive 10%

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interest per annum for the outstanding amount.

5. It is contended by the petitioner in Writ Petition No.244/2024 that since they had paid substantial amount, the allotted property should not be sold and that they would make the payment of balance amount within certain time. To show their bona fides, they had also deposit Rs.5 lakh as mentioned in terms of the order dated 15/01/2024. In the present petition the respondents appeared and have pointed out that in the earlier writ petition filed before this Court bearing Writ Petition No.9167/2023, the order rejecting the Judgment Debtors objections is challenged. However, in the present Writ Petition No.244/2024 there is no mention as regards the order passed and in the Writ Petition No.9167/2023. The Writ Petition No.9167/2023 this Court has similicitor issued notice and the matter is pending adjudication. The order challenged in the present Writ Petition No.244/2024 after rejection of the objection filed by the Judgment Debtors is a challenge to consequential order. In absence of any information being provided of earlier Writ Petition No.9167/2023, in the present Writ Petition No.244/2024 amounts to suppression of material fact and an order is obtained from this Court without disclosing the earlier pending Writ Petition No.9167/2023. The Writ Petition No.244/2024 challenges a

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consequent order passed after the rejection of objection of the petitioner. Every consequential order cannot give rise a fresh cause to file independent proceedings.

6. On the aspect of suppression of material fact, the Hon'ble Supreme Court, in case of ***M/s S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and Ors., reported in AIR 2004 Supreme Court 2421***, has held as follows : -

> *"As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken."*

7. In the case before the Hon'ble Supreme Court in the case of ***M/s S. J. S. Business Enterprises*** (Supra) , the appellant had

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pursued remedy an alternative forum and also filed a writ petition. However, the suit was withdrawn, and the appellant chose to seek remedy under Article 226 of the Constitution of India. In this context, the Court held that there was no suppression of facts, and the case had no merits.

8. In the present case, the petitioner filed another writ petition challenging the rejection of objection to the execution proceedings, which is currently pending before this Court without any interim relief. The petitioner challenged a subsequent order without disclosing the pendency of the first petition while obtaining an interim stay. This constitutes suppression of a material fact. If the Court had known about the earlier petition, it might have directed the petitioner to file an appropriate application in that petition or would have tagged the present petition with the earlier one, without granting any interim relief.

9. In case of ***Arunima Baruah vs. Union of India and Ors., reported in 2007 (6) SCC 120***, the Hon'ble Supreme Court has held as follows : -

> *"Ubi jus ibi remedium is a well known concept. The court while refusing to grant a relief to a person who comes with a genuine grievance in an arguable case should be given a hearing. [See Bhagubhai Dhanabhai Khalasi (supra)] In this*

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> *case, however, the appellant had suppressed a material fact. It is evident that the writ petition was filed only when no order of interim injunction was passed. It was obligatory on the part of the appellant to disclose the said fact."*

10. So also, the Hon'ble Supreme Court in case of ***M/s Prestige Lights Ltd. vs. State Bank of India, reported in 2007 (8) SCC 447***, held as follows in paragraph 34 : -

> *"34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."*

11. Considering the law laid down in the above Judgments and in view of the suppression of material fact of the earlier writ petition being pending in this Court without any interim relief and interim order being

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obtained in the subsequent writ petition without disclosing the earlier writ petition, both the writ petitions become liable for dismissal. In view of the same, the writ petitions stand dismissed. Pending Civil Applications stand disposed of.

12. Amount deposited in this Court stands transmitted to the Executing Court.

(ARUN R. PEDNEKER, J.)

vj gawade/-.

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