

Mr. Atul G. Damle, Senior Advocate for Petitioner.
Mr. R. S. Apte i/b. Mr. G. S. Bhat, Senior Advocate for Respondent.

P.C. :

2. Rule. Mr. Bhat waives for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

1/5

4. In support of this Petition, Mr. Damle submitted that the plaintiff instituted Suit No.5016 of 1983 for specific performance of contract, for declaration and for perpetual injunction. The parties entered into settlement and filed consent terms dated 24.07.1985. He submitted that the plaintiff has instituted execution proceedings in the year 2000, which is clearly barred by limitation. He further submitted that by order dated 02.11.2012, the learned trial Judge, by consent, appointed Architect as a Commissioner to carry out the following works:

- (i) The Architect shall go through the sanctioned plan.
- (ii) Thereafter he shall go through the area mentioned in first schedule (page - 9) of draft of Conveyance Deed submitted by plaintiff and the area mentioned in first, second and third schedule of pages No.10 and 11 of draft of Conveyance Deed submitted by defendant and he shall arrive at a proper area as per approved plan and submit the report to this Court.

5. Mr. Damle submitted that while passing the impugned order, the learned trial Judge has not dealt with the submissions made by the defendant that execution proceedings are barred by limitation. The learned trial Judge has also not considered the report dated 20.01.2013 submitted by the Architect.

6. On the other hand, Mr. Apte supported the impugned order. He submitted that in the first place, defendant did not press issue of limitation namely that the execution proceedings filed by the plaintiff are barred by limitation. Secondly, in terms of clause 13 of the consent terms, defendant was under obligation to complete entire development as per the sanctioned plans dated 22.02.1983, on or before 31.12.1988. Thus, the decree became executable only on and after 31.12.1988. Execution proceedings are instituted in October, 2000, and therefore, are clearly within 12 years from becoming the consent decree executable.

He invited my attention to paragraph 1 of affidavit in reply dated 19.01.2012 filed by Bhaskar L. Khade. He further submitted that in paragraph 3 of the impugned order, the learned trial Judge has considered the report submitted by the Architect. He, therefore, submitted that no case is made out for interfering with the impugned order.

7. I have considered the rival submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. In paragraph 1 of the reply, defendant specifically contended that execution application is time barred, and therefore, is liable to be rejected. Paragraph 2 reads as under:

“That at the outset, the execution application taken out by the plaintiffs is time barred on the face of it as admittedly the consent terms sought to be executed by the plaintiffs are passed on 24.07.1985 and the execution of the same has been applied for in the year 2000. The copy of the consent terms dated 24.07.1985 is been annexed and marked Exhibit 'B'. The limitation period for execution of any decree is 12 years from the date of passing of the same, but in this case, the same has been applied after 15 years. Hence, the application be rejected with compensatory cost. The copy of the notice u/o.xxi R.22 of the C.P.C. is annexed and marked Exhibit 'C'.”

8. It is also evident from record that during the execution proceedings, plaintiff applied for appointing officer of the Court for executing documents in their favour as per the consent terms and decree passed on 24.07.1985. That application was allowed by the trial Court on 02.11.2012. In paragraph 5, the learned trial Judge recorded that since there is dispute as regards area, the area is required to be ascertained from the sanctioned plan. In paragraph 6, it was observed that the said work needs the help of expert. By consent of the parties, Architect was appointed as a Commissioner of the Court to carry out the works more particularly extracted hereinabove. In particular in clause (ii), the Architect was directed to go through the area mentioned in the

first schedule, page No.9 of draft of the Conveyance Deed submitted by plaintiff and the area mentioned in the First, Second and Third Schedule of pages No.10 and 11 of draft of Conveyance Deed submitted by the defendant. He was to arrive at the proper area as per the approved plan and submit a report to the Court.

9. In pursuance thereof, Mr. Anil L. Korgaonkar, Architect submitted his report dated 20.01.2013. Perusal of the impugned order shows that in paragraph 3, the learned trial Judge has referred to the report submitted by the Architect. However, the learned trial Judge has not dealt with the submissions of the defendant that the execution application is barred by the limitation. The learned trial Judge in paragraph 6 has observed that the defendant is under obligation to execute the conveyance as per the draft sale deed submitted by the plaintiff. However, the learned trial Judge has not considered the report submitted by the Architect. On these grounds, the impugned order cannot be sustained and the matter will have to be remitted to the trial Court for deciding Execution Application afresh. The learned Senior Counsel appearing for the parties agree that they will appear before the trial Court at 2.45 p.m. on 23.06.2015 and for that purpose fresh notice need not be issued to them.

10. In view thereof, Petition is disposed of in the following terms:
- a. The impugned order dated 02.07.2014 is quashed and set aside and the Execution Application No.1034 of 2000 is restored to the file of the trial Court;
 - b. Parties agree that they will appear before the trial Court at 2.45 p.m. on 23.06.2015 and for that purpose fresh notice need not be issued to them;
 - c. The learned trial Judge will consider all the submissions

of the parties and pass appropriate order in accordance with law;

d. Having regard to the fact that the Suit is of the year 1983 and the consent decree is passed on 24.07.1985, the learned trial Judge is requested to decide the Execution Application within 2 months from the date of appearance of the parties;

e. All the contentions of the parties on merits are expressly kept open;

f. Rule is made absolute in the aforesaid terms;

g. Parties including the trial Court to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab