

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11114 OF 2014

Dr. Ashok Bhaskarrao
Chakranarayan

Petitioner

Vs

Miss Jyotsana Bhaskarrao
Chakranarayan and Anr.

.. Respondents

Mr. Vishal V. Hugalikar a/w Mr. Mayur Dilip Joglekar, Advocate for the petitioners.

Mr. Madhav J. Jamdar, Advocate for respondents no.1 and 2.

CORAM : R.G.KETKAR,J.
DATE : 13/08/2015

PC:

1. Heard Mr. Vishal Hugalikar, learned counsel for the petitioner and Mr. Madhav Jamdar, learned counsel for respondents no. 1 and 2.

2. By this Petition under Article 227 of the Constitution of India, original defendant has challenged the Judgment and order dated 5.10.2013 below Exhibits 1, 43 and 44 as also the Judgment and order dated 12.8.2014 below Exhibit 48 in final decree no. 8 of 2010, passed by the learned 5th Jt. Civil judge, Sr Dn., Pune. By order dated 5.12.2013, learned trial Judge dismissed the application Exh.43 taken out by the respondents, hereinafter referred to as 'plaintiffs' and allowed the application Exhibit-44 filed by the petitioner, hereinafter referred to as 'defendant'. The learned trial Judge determined Rs.55,00,000/- as

fair and reasonable price of flat, namely Flat No.1, admeasuring 731 sq.ft, situate on the ground floor of the building known as 'Sai Nivas', 161- A Modibaug, Ganesh Khind Raod, Shivaji Nagar Pune (for short, 'suit flat'). The defendant was permitted to purchase the suit flat for the said value by paying the consideration of the plaintiff's share, i.e. $\frac{2}{3}$ rd „ amounting to Rs. 36,67,000/- by depositing in the court within one month. The plaintiffs were directed to execute sale deed of their $\frac{2}{3}$ rd share in the suit flat in favour of the plaintiffs within two months from the date of order. If the plaintiffs fail to execute the sale deed, the defendant was at liberty to get it executed through Court Nazir by appointing him Court Commissioner as per the rules on payment of necessary fess and charges. The defendant was directed to bear registration and stamp charges for execution of the sale deed in respect of the suit flat. The defendant was to get approval of the Court to the draft sale deed before execution and the amount deposited in court against the transaction was to be disbursed in favour of the plaintiffs after execution of sale deed.

3. By order dated 5.8.2014 below Exh.48, the learned trial Judge dismissed the application for review of the order dated 5.10.2013.

4. After arguing the petition for quite some time, Mr. Huglikar, upon taking instructions from the defendant, seeks permission to withdraw this Petition. He submits that the time stipulated in the

order dated 5.10.2013 for depositing Rs. 36,67,000/- in the executing court may be enlarged by one month from today. He assures that within one month from today, the plaintiffs will deposit Rs. 36,67,000/- representing 2/3rd share of the plaintiffs in the executing court under due intimation in writing to the plaintiffs. He further assures that the defendant will not seek further extension of time for depositing the amount and accepts that in case the defendant fails to deposit Rs.36,67,000/- in the executing court within one month from today, his right to purchase the suit flat shall stand extinguished and the plaintiffs will be entitled to purchase the suit flat subject to depositing Rs. 20,00,000/- in the executing court within two weeks under due intimation in writing to the defendant. The plaintiffs shall deposit Rs. 20,00,000/- in the executing court within two weeks in the event of failure of the defendant to deposit Rs.36,67,000/- in the executing court within one month from today.

5. In case, the defendant deposits Rs.36,67,000/- in the executing court within one month from today, the plaintiffs shall execute sale deed through Court Nazir by appointing him Court Commissioner as per the rules on payment of necessary fees and charges. The defendant shall bear the registration and stamp charges for execution of sale deed in respect of suit flat and shall get approval of court to the draft of sale deed before execution and the amount deposited in court against the transaction be

released in favour of the plaintiffs after execution of sale deed. The plaintiffs are entitled to withdraw Rs.36,67,000/- unconditionally.

6. In case the defendant fails to deposit Rs.36,67,000/- in the executing court within one month from today, his right to purchase the suit flat shall stand extinguished. The plaintiffs will be entitled to purchase the suit flat subject to depositing Rs.20,00,000/- in the executing court within two weeks thereafter under due intimation in writing to the defendant. The defendant is permitted to withdraw Rs.20,00,000/- unconditionally.

7. Petition is allowed to be withdrawn in the aforesaid terms.

8. Parties to act on the authenticated copy of this order.

(R.G.KETKAR, J.)