

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 769 OF 2014

Samrat Ashoknagar Bhadekaru
Gruhanirman Sanstha Mydt.
Ichalkaranji

...Applicant

Versus

Shri Natha Bhau Walkunje
and Ors.

...Respondents

....

Mr. Manoj A. Patil, Advocate for the Applicant.

Mr. P.D. Dalvi, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 2nd May, 2016

P.C.

1. Heard Mr. Manoj Patil, learned Counsel for the applicant and Mr. P.D. Dalvi, learned Counsel for the respondent No.1, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'CPC'), the applicant has challenged the judgment and order dated 16.4.2014 passed by learned Jt. Civil Judge, Junior Division, Ichalkaranji below Exhibit-173 in Regular Darkhast No.309/2000. By that order, learned trial Judge allowed the application made by respondent No.1,

hereinafter referred to as 'decree holder' under Order 26 Rule 18-A of CPC and appointed Nazir of the Court as Court Commissioner to execute the re-conveyance deed as per the draft given at Exhibit-162. Learned trial Judge directed the decree holder to comply the requisite provisions of the decree in Special Civil Suit No.155/1990 and to pay the Court Commissioner fees at the rate of Rs.2,000/-. The Court Commissioner was directed to execute the decree and to register the re-conveyance deed and to submit the report within three months from the date of the order. The prayer of judgment debtor (respondent Nos.2 to 4 herein) to frame issues under Order 21 Rule 97 of CPC was rejected.

3. The decree holder has instituted Special Civil Suit No.155/1990 against respondent No.2 Babgonda Dada Patil (since deceased), hereinafter referred to as 'judgment debtor No.1', and respondent Nos.3 and 4, hereinafter referred to as 'judgment debtor Nos.2 and 3' for specific performance of the agreement of sale dated 15.2.1988. On 25.8.1993, learned trial Judge decreed the suit. Judgment debtors were directed to transfer the suit property in favour of the decree holder as per

the provisions of the Maharashtra Housing and Area Development Board, 1976 and Rules and Regulations framed thereunder. Clause-4 of the operative part of the order, which is relevant, for deciding the present controversy, reads as under :

“4. In the transfer is not effected by the Housing Board due to some technicalities of regulations, the plaintiff shall be entitled for the refund of earnest money Rs.30,000/- from the defendants and interest thereon at the rate of 6% p.m. from the suit date till full realization and the amount of Rs.18,000/- deposited in Court.”

4. It appears that said decree was not challenged by the judgment debtors and has attained finality.

5. Decree holder filed Special Darkhast No.98/1994 for execution of the decree. Decree holder filed application Exhibit-109 praying for passing appropriate direction against the Chairman/Secretary of the applicant herein. The applicant herein resisted the application by filing reply at Exhibit-114 on 12.2.2004. Decree holder filed application dated 12.2.2014 under Order 26 Rule 18A of CPC for appointment of the Court Commissioner for execution of the re-conveyance deed. Judgment debtors filed reply dated 20.2.2014 at Exhibit-174. By

the impugned order dated 16.4.2014, learned trial Judge allowed the application, as indicated earlier. It is against this order, the applicant, has instituted the present Civil Revision Application.

6. By order dated 17.9.2014, this Court issued notice for final disposal to the respondents returnable on 8.10.2014. The parties were put to notice that CRA will be heard and decided finally at the stage of admission. In the meantime, ad-interim order in terms of prayer clause (c) was granted. In that order, the submission on behalf of the applicant to the effect that though the applicant has also filed application under Order XXI Rule 97 of CPC at Exhibit-186, without deciding that application, learned trial Judge decided the application Exhibit-173.

7. Mr. Dalvi submitted that the impugned order was passed on 16.4.2014. Application Exhibit-186 was not even filed and consequently was not pending. However, impression was sought to be created before this Court that learned trial Judge decided application Exhibit-173 without first deciding application Exhibit-186, which is factually incorrect and contrary to record. He submitted that as the applicant has

obtained ad-interim order by misleading the Court, he is not entitled to be heard in the present proceedings.

8. Mr. Dalvi further submitted that though the applicant has filed application Exhibit-186 under Order 21 Rule 97 of CPC raising objections, the same was not pressed and application was disposed of as not pressed. He further submitted that the applicant is resisting the execution of the decree on the ground that as per the bye-laws, the decree holder is not eligible to become member. He submitted that said issue will arise only after application is made by the decree holder under Section 22 of the Maharashtra Co-operative Societies Act, 1960. At that stage, the applicant can examine whether decree holder is eligible to become member of the society or not.

9. On the other hand, Mr. Patil submitted that clause-4 of the operative part of the order provided that if the transfer is not effected by the Housing Board due to some technicalities of regulations, the decree holder shall be entitled for the refund of earnest money Rs.30,000/- from the judgment debtors and interest thereon at the rate of 6% p.m. from the date of suit till full realization and the amount of Rs.18,000/- deposited in

Court. He submitted that in view of clause-4 of the operative part of the order, decree is not executable. Apart from that, he submitted that the applicant is not eligible to become member of the society as he does not qualify the requirements laid-down in the bye-laws. Amongst others the bye-laws require that a person should be industrial labourer. As the decree holder does not satisfy this qualification, he cannot be enrolled. He further submitted that decree holder is also required to obtain prior permission of the society.

10. Mr. Patil submitted that in fact till date application Exhibit-109 made by decree holder on 18.2.2010 is not decided. Till such time that application is decided, the impugned order may not be acted upon. He submitted that in fact the applicant has filed reply at Exhibit-114 on 12.7.2004 opposing application at Exhibit-109.

11. As far as order dated 17.9.2014 is concerned, he conceded that application at Exhibit-186 was not made when the impugned order was passed. Application Exhibit-186 was made on 13.8.2014 and the same was disposed of as not pressed.

12. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suit instituted by the decree holders against the judgment debtors was decreed. Clause-4 of the operative part of the order, already extracted hereinabove, shows that if the transfer is not effected by the Housing Board, the decree holder shall be entitled for refund of earnest money, amongst other things. Perusal of communication dated 8.8.2014 addressed by the Estate Manager of Housing Board to Sub-Registrar, Ichalkaranji shows that the Housing Board has given no-objection for transferring suit property in favour of decree holder. In view thereof, requirement of clause-4 of the operative part of the order is complied by the decree holder.

13. The main objection of the applicant is that the decree holder does not satisfy the qualification prescribed in the bye-laws. As noted earlier, decree holder has not made application for membership of the society. That apart, application made by the applicant society under Order 21 Rule 97 at Exhibit-186 is disposed of as not pressed. In fact while obtaining order on

17.9.2014, the applicant did not disclose true and correct facts before this Court which led this Court to issue notice to the respondents. Now it is accepted position that application Exhibit-186 was not pending when application Exhibit-173 was decided. In view thereof, I do not find that any case is made out for invocation of powers under Section 115 of CPC. As and when decree holder makes an application for membership, the society will consider that application in accordance with law and take appropriate decision. Subject to this, application fails and the same is dismissed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)