

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1566 OF 2016

BOMBAY CONSTRUCTION AND
ENGINEERING COMPANY PRIVATE LTD ...Petitioner

Versus

MOTILAL ATMARAM TANDEL
AND ORS ...Respondents

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Mr. M.M. Vashi i/b. M.P. Vashi & Associates for the Petitioner.
Mr. Vijay S. Gharat, Advocate for Respondent No.1.
Mr. Rajesh S. Patil, Advocate for Respondent No.2.
Ms. Vaishali Sanghavi, Advocate for Respondent Nos.3 & 4.

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CORAM : R. G. KETKAR, J.

DATE : 08th MARCH, 2016

P.C.

1. Heard Mr.M.M. Vashi, learned Senior Counsel for the petitioner, Mr. Vijay Gharat, learned Counsel for respondent No.1, Mr. Rajesh Patil, learned Counsel for respondent No.2 and Ms. Vaishali Sanghavi, learned Counsel for respondent Nos.3 and 4, at length.

2. On the oral application made by Mr. Vashi leave to delete respondent No.5 is granted as no relief is claimed against respondent No.5. Amendment shall be carried out forthwith.

3. Rule. Learned Counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 1.1.2016 passed by learned Principal District Judge, Raigad-Alibag below Exhibit-1 in Civil Misc. Application No.207/2015. By that order, learned Principal District Judge partly allowed the application made by respondent No.1 under Section 24 of Code of Civil Procedure, 1908 and transferred the proceedings of Special Darkhast No.32/2015 from the Court of learned Civil Judge, Senior Division, Panvel (Shri Lohar) to the Court of 2nd Civil Judge, Senior Division, Panvel (Shri. Khomne).

5. It is the case of the petitioner that Shri Atmaram Dharma Tandel, since deceased, predecessor of respondent Nos.1 to 5 was owner of different plots of lands which he had agreed to sell to the petitioner under an agreement for sale dated 4.1.1995. On 4.5.1998, said Atmaram died leaving behind respondent Nos.1 to 5 as his legal heirs and representatives. The City and Industrial Development Corporation (for short,

'CIDCO') had allotted plot No.30 in Sector No.9 admeasuring 2250 sq. mtrs. to respondent Nos.1 to 5 (for short, suit plot) against acquisition of plots owned by Atmaram, since deceased. It is the case of the petitioner that though respondent Nos.1 to 5 had received part payment from it, they refused to complete the said transaction. The petitioner was therefore constrained to institute Special Civil Suit No.588 of 2010 in the Court of Civil Judge, Senior Division, Panvel for specific performance of the agreement for sale amongst other reliefs. On 22.9.2011, consent terms were arrived at between the petitioner and the first respondent. On different dates the consent terms were also arrived at between the petitioner and respondent Nos.2 to 5 wherein respondent Nos.2 to 5 also got payment and have transferred their right, title and interest in the suit plot in favour of the petitioner.

6. On 5.6.2014, CIDCO had executed agreement of lease in favour of respondent Nos.1 to 5. The petitioner made an application to CIDCO for assignment of lease in its favour. On 8.8.2014, the petitioner received a notice from one Ms. Shantabai Motilal Tandel and Mr.Ganesh Motilal Tandel, who claimed that said Shantabai was the second wife of respondent

No.1 Motilal and Ganesh is the son born out of said wedlock. Before the petitioner could reply the said notice, respondent No.1 instituted Regular Civil Suit No.284/2014. On 22.8.2014, trial Court passed exparte order of status quo. Though notice dated 8.8.2014 was given to the petitioner, it was not made party defendant in that suit. The petitioner instituted Writ Petition No.8989/2014 in this Court challenging the exparte order of status quo dated 22.8.2014. Said petition was disposed of on recording statement that Ganesh Motilal Tandel will join the petitioner as party defendant. The petitioner also made statement that the new added defendant will make application for vacating the order of status quo. In pursuance thereof, the petitioner made an application for vacating the order of status quo. That application was allowed and the status quo was vacated. Appeal preferred by Ganesh was dismissed as also Writ Petition instituted in this Court was rejected.

7. The petitioner instituted Special Darkhast No.32/2015 in the Court of Civil Judge, Senior Division, Panvel for execution of the consent decree. The executing Court directed the petitioner to deposit a sum of Rs.45,00,000/-. The petitioner has deposited that amount in the trial Court. It is the case of the

petitioner that the total consideration payable to respondent Nos.1 to 4 has been paid and/or deposited in the executing Court. It appears that the hearing of the execution proceedings was fixed on 27.10.2015. Respondent No.1 was present along with his son Mayur. It is case of the first respondent that immediately after they left the Court, Shri Lalit Nagpal, Director of the petitioner abused respondent No.1 and his son. Shri Nagpal also threatened respondent No.1 and his son that they should not raise any objection to the darkhast proceedings. Even if they raise any objection, said objections will not be considered as he has made setting with the Court. The Court is bound to appoint Court Commissioner for executing the tripartite agreement. Necessary preparation is already made in that regard. The Court is in the hands of Shri Nagpal. The threats were given in the presence of third person Shri Haresh Patil as well.

8. Respondent No.1 made an application on 7.11.2015 before the executing Court for transferring the proceedings. Mr.Vashi submitted that said application is pending. During pendency of that application, respondent No.1 filed application

on 26.11.2015 before learned Principal District Judge for transferring the proceedings from the Court of Civil Judge, Senior Division, Panvel (Shri Lohar) to any other Court. In paragraph-5 of that application, the assertions made in paragraph-2 of the application dated 7.11.2015 were reiterated.

9. By the impugned order, learned Principal District Judge transferred the proceedings, as indicated earlier. In paragraph-7 of the impugned order, learned Principal District Judge noted that making of application dated 7.11.2015 by respondent No.1 before the executing Court shows his conduct. It was further observed that how to react to the incident depends upon every person. Respondent No.1 also does not state that he lodged complaint to the police station. It also cannot be commented as to whether application for transfer is made for delaying the execution proceedings. However, it appears that respondent No.1 apprehends that he will not get justice from the Court. The learned Principal District Judge did not think it appropriate to comment upon the allegations made as regards the incident. It was observed that however, these allegations are made about the impartiality of the Judge. If the litigant apprehends that he will not get justice from that Court,

it is appropriate to transfer the proceedings to some other Court.

10. Mr. Vashi submitted that in fact respondent No.1 made baseless allegations against learned Judge only with a view to delaying the passing of the order on the execution application. By making such baseless allegations, the first respondent as well as his Advocate committed contempt of Court by undermining the majesty of the judicial process. This Court should therefore take *suo moto* action against the first respondent and his Advocate. He further submitted that there is a growing trend amongst the litigants to make false allegations against a Judge only with a view to changing the Court which leads to forum shopping. On one hand learned Principal District Judge did not deal with the alleged incident and on the other transferred the proceedings on the ground that respondent No.1 apprehends that he will not get justice. He submitted that according to respondent No.1 the incident allegedly took place on 27.10.2015. There is no explanation, worth the name, as to why respondent No.1 and his Advocate waited till 7.11.2015 for making application for transfer before the executing Court and equally there is no explanation as to

why they made application on 26.11.2015 before learned Principal District Judge. He, therefore, submitted that the impugned order deserves to be set aside.

11. On the other hand, Mr. Gharat and Mr. Patil supported the impugned order. They submitted that learned Principal District Judge observed that respondent No.1 apprehends that he will not get justice from the executing Court and, therefore, it was appropriate to transfer the proceedings from the concerned Court. They submitted that no case is made out for interfering with the impugned order.

12. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record.

13. As noted earlier, the petitioner has instituted the execution proceedings for execution of the consent decree. The matter was fixed on 27.10.2015 before the executing Court. Respondent No.1 came with the case that after they left the Court, Shri Nagpal, Director of the petitioner abused respondent No.1 and his son. Shri Nagpal also threatened respondent No.1 and his son that they should not raise objection to the darkhast

proceedings. Even if respondent No.1 raises any objection, the same will not be considered as he has made setting with the Court. The Court is bound to appoint the Court Commissioner for executing the tripartite agreement and for that purpose necessary preparations were already made. The Court is in the hands of Shri Nagpal.

14. Perusal of the assertions made in paragraph-2 of the application dated 7.11.2015 and paragraph-5 of the application dated 26.11.2015 shows that respondent No.1 made serious allegations against the concerned Court. It is in that context, one has to examine the conduct of the first respondent. It is not in dispute that respondent No.1 is represented by an Advocate. If really the alleged incident had taken place on 27.10.2015 in the Court precincts, there is no explanation as to why respondent No.1 and his Advocate did not make complaint before the executing Court on that date or at least immediately next date. There is also no explanation for belatedly making application on 26.11.2015 to the learned Principal District Judge. Respondent No.1 also did not make any complaint to the police authorities in respect of the alleged incident. Diwali Holidays of that Court were from 9.11.2015 to 13.11.2015. In

other words, the concerned Court was working till 7.11.2015. The alleged incident took place on 27.10.2015 and the application before the executing Court is made only on 7.11.2015. There is no explanation as to why the first respondent waited till 7.11.2015 which was the next date of hearing of said darkhast before executing Court. If at all there was any ring of truth in the allegations, one would expect the first respondent/his Advocate to immediately make complaint to the concerned Court on the same date and not wait till next date of hearing or before the learned Principal District Judge. Even during the course of hearing, Mr. Patil and Mr. Gharat were not in a position to give any explanation for not making complaint immediately after alleged incident of 27.10.2015 either before the executing Court or before the learned Principal District Judge.

15. The learned Principal District Judge observed that the very fact that on 7.11.2015, the first respondent made an application in Panvel Court throws light on his conduct. In my opinion, it is rather other way round. Respondent No.1 belatedly made application on 7.11.2015. The application was clearly made as an afterthought. This is to be appreciated on

the backdrop of the fact that darkhast proceedings are filed for execution of the consent decree.

16. In my opinion, if there was ring of truth in the allegations made by the first respondent, the proceedings must be transferred to some other Court. But, at the same time if the allegations are baseless and were made as an afterthought, the transfer application must be dealt with by iron hands so as to protect the concerned Judge who is not in a position to defend himself. Transfer of proceedings from one Court to other Court on the ground of integrity of the concerned Judge has to be viewed seriously. Respondent No.1 owes explanation for not making application at the earliest available opportunity. It is not the case of the first respondent that the concerned Court was not available from 27.10.2015 till 7.11.2015 or that the learned Principal District Judge was not available till 26.11.2015.

17. In the light of aforesaid discussion, impugned order cannot be sustained and as such is liable to be set aside. Application i.e. Civil Misc. Application No.207/2015 is dismissed. Rule is made absolute in aforesaid terms with no order as to costs.

18. Liberty is reserved with the parties to apply for expeditious disposal of the darkhast. If such an application is made, learned trial Judge will pass appropriate orders in accordance with law.

19. At this stage, Mr. Gharat orally applies for stay of this order for a period of two weeks from today. At his request, this order shall remain stayed for a period of two weeks from today. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)