IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3121 OF 2016

Sunil B. Takale .. Petitioner
vs.
Shashikant D. Jadhav and anr. .. Respondents

Mr. P.D. Dalvi for the Petitioner.
Mr. Ranjit Patil for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 19 OCTOBER 2016.

P.C. :-

1] The challenge in this petition is to the order dated 10 February 2016 made by Ad-hoc District Judge-1, Sangli dismissing the petitioner's application seeking stay on execution of decree for specific performance dated 30 August 2011 pending consideration of the petitioner's application seeking condonation of delay in applying for restoration of the appeal preferred by the petitioner in order to question the decree dated 30 August 2011.

2] In this case, the decree for specific performance was made by the Trial Court on 30 August 2011. The appeal against the same was filed on 13 January 2014. Since, the same was instituting beyond the prescribed period of limitation, the petitioner also filed an application for condonation of delay. The petitioner also applied for stay on the execution of the decree. Neither in the memo of appeal nor in application seeking condonation of delay or application for stay of the execution of decree, the petitioner made any disclosure with regard to the sale of the suit property vide registered sale deed dated 3 July 2013.

3] On 24 July 2014, the Appeal Court made an order requiring the petitioner to pay requisite paper book charges. Since, the same were not paid by the petitioner, the Appeal Court dismissed the appeal for non-prosecution on 30 September 2015.

4] The petitioner, again, after some delay, applied for restoration of the appeal on 18 December 2015. This application was again accompanied by application seeking condonation of delay as also stay on the execution of the decree. Again, the petitioner suppressed the vital and material particulars that he had by registered sale deed dated 3 July 2013 already sold or purported to sale the suit property despite decree for specific performance against him.

5] The Appeal Court by impugned order dated 10 February 2016, rejected the application for stay by observing that no such stay can be granted, since, the appeal itself had been dismissed for non-prosecution.

6] The petitioner on 3 March 2016, instituted present petition in this Court. The petitioner, on 27 April 2016, obtained *ex-parte* ad-interim order restraining the execution of the specific performance decree dated 30 August 2011. In the entire petition, there is no disclosure that the petitioner had in fact sold the suit property vide registered sale deed dated 3 July 2013. At the stage, when the ad-interim order dated 27 April 2016 was granted to the petitioner, there was no notice to the respondents and therefore, it was not possible for this Court to know about this fact.

7] On 15 June 2016, on the basis of statement made by the learned counsel for respondent Nos.1 and 2, that the main appeal before the District Court having been dismissed, there arises no question of entertaining any petition seeking stay on the execution of decree pending appeal was accepted and this petition itself was dismissed. Liberty was however, granted to the petitioner to take appropriate steps for filing a fresh petition, in case the petitioner's Regular Civil Suit No. 201 of 2014 is restored by the Appeal Court.

8] The petitioner, instituted a Review Petition No. 94 of 2016 pointing out that the stay application made by the petitioner was not pending in the appeal, but the same was pending consideration of the petitioner's application seeking condonation of delay in seeking restoration of the appeal. On this basis, the order dated 15 June 2016 was recalled and even, the ad-interim protection granted earlier on 27 April 2016 was restored.

9] On 17 October 2016, on the basis of the submission of learned counsel for respondent Nos.1 and 2 that the petitioner had already sold the suit property on 3 July 2013 and had failed to disclose this fact to this Court as well as the appeal Court, the following order was made:

> *"1] This petition has a chequered history. However, if the statement now made by the respondent 1 & 2, the decree holder is true, and prima-facie, such statement appears to be true, then this petition as well as other proceedings instituted by this petitioner will have to be dismissed on the ground that the petitioner has abused the process of the court.*
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> *2] The petitioner and respondent Nos.1 and 2 entered into agreement of sale dated 07.11.2007 in respect of the suit property. Since, the agreement was not honoured, the*

respondents instituted a suit for specific performance. This suit was decreed on 30.08.2011. The execution was also filed some time in the year 2012.

3] The petitioner, instituted an appeal on 13.01.2014 against the decree dated 30.08.2011. The appeal having been instituted beyond the prescribed period of limitation, the same was accompanied by application seeking condonation of delay. On 24.07.2014 an order was made requiring the petitioner to pay charges towards printing and preparation of paper book. The same charges were not deposited within the stipulated period and the appeal came to be dismissed on 30.09.2015. The petitioner, again after the prescribed period of limitation applied for restoration alongwith condonation of delay. The petitioner also applied for stay on the execution of the decree.

4] On 10.02.2016 the appeal court dismissed the application for stay holding that since the appeal has been dismissed for delay, there is no question of entertaining any application for stay. Aggrieved by this order, the present petition came to be instituted.

5] Even the present petition was dismissed on the ground that the appeal itself has been dismissed. However, this order was reviewed upon the petitioner pointing out that the petitioner's application seeking condonation of delay and restoration of appeal were pending and therefore this petition could not have been dismissed on the ground that the appeal itself had been dismissed.

6] Today, the learned counsel for the respondent placed on record a document which atleast prima-facia suggests that the petitioner has sold or purported to sell the suit property by conveyance dated 03.07.2013 to one Shripati Shyamrao Patil. Mr. Dalvi, learned counsel for the petitioner states that he is not aware as to whether this position is correct and seeks time in order to obtain instructions in this matter.

7] This position is correct, it means that the petitioner despite decree of specific performance dated 30.08.2011 has proceeded to sale the suit property on 03.07.2013 and only thereafter instituted the appeal dated 13.01.2014. In this appeal, the petitioner applied for stay on the execution of the decree. From 13.01.2014 till date there is no disclosure of sale, if any, in respect of the suit property. For reasons, attributable mainly to the petitioner, valuable judicial time, both this Court *as well as District Court has been consumed by the petitioner in seeking stay on the execution of the decree.*

8] The order dismissing the appeal was made because the petitioner failed to pay paper book / printing charges. Restoration was not applied for in time. Stay application was rejected because the appeal was yet to be restored. This Court, granted interim relief staying the execution. This petition was dismissed and thereafter restored upon review. If the petitioner had indeed sold the suit property on 30.08.2011 and has failed to disclose this fact, then, atleast prima facie, this constitute serious abuse of the process of this Court.

9] The document produced by the learned counsel for the respondents appears to be receipt issued by the Registration Office (Index 2). However, request of Mr. Dalvi seeking some time to obtain instructions is quite reasonable. With the advent of digitilization, it is easily possible to obtain the main document as well as details with regard to the same. In order to enable Mr. Dalvi to obtain instructions, the matter is adjourned to 19th October, 2016. If on this date no statement is made with regard to the execution of the conveyance dated 03.07.2013 in relation to the suit property, this Court might have no option to proceed on the basis that suit property, as contended by the respondents was sold or attempted to be sold by the petitioner on 03.07.2013 and there is failure to disclose this circumstance either to the appeal court or this Court.

10] Thus, place the matter on 19th October, 2016 on supplementary board (HOB). In the meanwhile parties to maintain the status quo in relation to the suit property."

10] Today, Mr. Dalvi, learned counsel for the petitioner, has fairly admitted that the petitioner had indeed sold the suit property to Shripati Shyamrao Patil vide conveyance dated 3 July 2013. Mr. Dalvi, however, submitted that respondent No.1, despite the stay order granted by this Court, has proceeded to execute the suit property by taking out execution proceedings. Mr. Dalvi submits that the petitioner was genuinely unaware of the decree dated 30 August 2011 and it is on account of such ignorance that the petitioner, took the step of selling the suit property vide conveyance dated 3 July 2013. Mr. Davli also submitted that there is no bar to the Appeal Court restraining execution of a decree pending consideration of the application seeking condonation of delay in seeking restoration of the appeal, which was dismissed only on the ground of failure on the part of the petitioner's advocate in depositing printing charges. Mr. Dalvi points out that since respondent No.1 despite the stay order granted by this Court has proceeded to execute the decree for specific performance, the relief in the present petition is virtually rendered infructuous. Mr. Dalvi submits that the petitioner will now take out appropriate proceedings against respondent No.1 for having breached of the stay order granted by this Court in the matter of restraint upon execution of decree for specific performance dated 30 August 2011.

11] Having heard learned counsel for the parties, in my judgment, it is clear that the petitioner, has squarely abused the judicial process. The petitioner has suppressed most vital and material documents not only from this Court, but also from the Appeal Court and for this reason, this petition is required to be dismissed with exemplary costs.

12] There is really no reason to accept the petitioner's defence that he was unaware of the decree for specific performance dated 30 August 2011. However, even if it is assumed that the petitioner was genuinely unaware of the decree on 3 July 2013 when he sold the suit property, the petitioner was surely aware of the decree on 13 January 2014 when he instituted an appeal against the same before the District Court. It is significant to note that alongwith the memo of appeal, the petitioner applied for stay on the execution of decree. The petitioner, having already sold the property vide conveyance dated 3 July 2013, was not at all justified in applying for stay on the execution of the decree. Such suppression on the part of the petitioner is not only deliberate, but constitutes a very serious abuse of the process of the Court.

13] After the petitioner's appeal was dismissed for non-payment of paper book charges, the petitioner does not apply for restoration within the prescribed period of limitation. Such restoration is applied for alongwith application for condonation of delay. Again, on this occasion also, the petitioner seeks a stay on the execution of the decree, suppressing the fact that the suit property has already been sold by him. Once, the stay application was rejected, the petitioner filed a petition before this Court to question rejection of the stay. Again, the petitioner did not disclose that the suit property has been sold by him way back on 3 July 2013, and by suppression of this vital and material particular, the petitioner persuaded this Court to grant an *ex-parte* stay on the execution of the decree dated 30 August 2011.

14] The petitioner, by suppression of such vital and important material, has virtually required the Appeal Court as well as this Court to spent valuable judicial time. It appears that the entire aim of the petitioner was to somehow is to keep the matter pending and on basis of such pendency to draw some mileage out of the situation. The actions of the petitioner are by no means innocent. The petitioner has obtained advantage out of his acts of deliberate and intentional suppression of material and vital documents from this Court.

15] The Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu (dead) by Lrs. v. Jagannath (dead) by Lrs. & ors.***[1] has observed thus:

> ***"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.***
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> *5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.* ***The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has***

1 (1994)1 SCC 1

> ***no right to approach the court. He can be summarily thrown out at any stage of the litigation.***
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> *6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff.* ***A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.***
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> *(emphasis supplied)*

16] The aforesaid observations clearly apply to the present petition. The conduct of the petitioner before the Appeal Court as well as this Court does not entitle the petitioner to any relief in this petition. Dismissing this petition merely on the grounds that the same has become infructuous, would virtually amount to grant of premium to the petitioner, after the petitioner had indulged into suppression of material particulars and severely abused the process of this Court.

17] The issue as to whether respondent No.1 has breached the stay order granted by this Court or not, is an independent matter. In case, the petitioner, seriously decides to take out proceedings against the respondent No.1, the same will no doubt be examined in accordance with law. However, that alleged circumstance by itself, is no reason to entertain the present petition.

18] Accordingly, this petition is dismissed with exemplary costs quantified at Rs.1,000,000/- (Rs. One Lac only). The petitioner is directed to deposit the costs of Rs.1 Lac within a period of four weeks from today in this Court. Out of this costs of Rs.1 Lac so deposited, an amount of Rs.25,000/- (Rs. Twenty Five Thousand only) shall be paid to respondent No.1. The balance amount shall be made over to ***Kirtikar Law Library***. In case the costs are not paid, apart from respondent No.1, the Legal Services Authority to take steps for execution of the costs.

19] In terms of the sale deed dated 3 July 2013, it appears that the petitioner has earned amount of approximately Rs. 3 Lacs by way of sale of the suit property. Such sale was purported to be effected by the petitioner, even after he had suffered decree for specific performance requiring the petitioner to convey the property to respondent No.1. This fact was consistently suppressed by the petitioner, who has, on basis of such suppression, not only secured the interim reliefs, but also wasted valuable judicial time of this Court as also the Appeal Court. For these reasons, exemplary costs of Rs.1 Lac have been imposed upon the petitioner.

20] Further, the parties are directed to place a copy of this order before the Appeal Court before whom the application for condonation of delay and restoration of the appeal is pending. The Appeal Court is directed to dispose of the said applications in accordance with law, by taking into consideration the circumstance that the petitioner has suppressed the material and vital documents and has abused the process of the Court. The Appeal Court to dispose of this application within a period of four weeks from the date on which the authenticated copy of this order is filed before it.

21] The parties are directed to appear before the Appeal Court on 24 October 2016 and produce authenticated copy of this order. Learned counsel for respondent No.1 states that even otherwise this is a scheduled date before the Appeal Court.

22] At this stage, Mr. Davli, learned counsel for the petitioner, seeks for a stay on the execution of this order. By this order, all that is done is that the petitioner's application seeking stay against the execution on the decree has been dismissed. The petitioner has now admitted that he has already sold the suit property to the third party on 3 July 2013. As such there is nothing to stay. Insofar as directions of the payment is concerned, the petitioner has already been granted four weeks time to deposit the costs.

(M. S. SONAK, J.)

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