

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

WRIT PETITION NO.5296 OF 2015

Mr. Sanjay Tamanna Atalatti

..Petitioner

Versus

Miss. Saniya Sanjay Atalatti and another

..Respondents

Mr. U. R. Mankapure for the Petitioner.

Mr. Varad Deore for the Respondents.

CORAM : R. M. SAVANT, J.

DATE : 14th DECEMBER, 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 23.02.2015 passed by the Learned Ad-hoc District Judge-6, Pune, by which order, the Civil Misc. Application No.128 of 2013 filed by the Respondents herein came to be allowed and permission came to be granted to the Applicants i.e. the Respondents to sell the suit flat with condition to purchase another flat in the vicinity of the school of the minor Saniya Sanjay Atalatti within six months from the date of the order.

2 It seems that in Marriage Petition being P. A. No.417 of 2008, a decree came to be passed in terms of the Consent Terms. In terms of clause (1) thereof, the Petitioner herein had procured a flat in Vardayni Co-operative Housing Society being Flat No.46, Pashant Road, Pune in

the name of the minor Saniya. The Petitioner and the Respondent were to reside in the said flat. It seems that Saniya is suffering from an ailment, as a result of which, it is difficult for her to travel to her school from the said flat which is a distance of about 35 kilometers either way. The Respondent was therefore desirous of shifting to a place nearby the school of the minor Saniya and therefore had filed the Civil Misc. Application No.128 of 2013 seeking permission to sell the existing flat in the said Vardayni Co-operative Housing Society. The said permission as indicated above has been granted by the impugned order dated 23.02.2015.

3 The Petitioner herein i.e. husband has invoked the writ jurisdiction of this Court in view of the fact that though flat was to be purchased in the name of minor Saniya, the Sale Deed shows that the flat has been purchased in the proportion of 50% each in the name of the Saniya and the Respondent No.2. This, according to the Petitioner is against the spirit of the Consent Terms filed between the parties as the flat was to be purchased solely in the name of Saniya as and by way of security. The Petitioner at the initial hearing of the above Petition had expressed his no objection to the sale of the existing flat, but the same was on the basis that the Respondent No.2 would buy the new flat in the name of Saniya and not the Respondent No.2.

4 Upon this, the Learned Counsel for the Respondents Mr. Varad Deore has taken instructions from the Respondent No.2. The Respondent No.2 has identified a flat which is just across the school of minor Saniya which the Respondent No.2 proposed to purchase after selling the existing flat. The Learned Counsel Mr. Varad Deore further makes a statement that the Respondent No.2 would also file an undertaking that the new flat would be purchased in the name of Saniya and that the Respondent No.2 would have no share in the same. Statement accepted.

5 The Learned Counsel appearing for the Petitioner Mr. U. R. Mankapure on instructions of the Petitioner conveys his no objection to the same. Hence the following directions :-

I) The impugned order dated 23.02.2015 is not interfered with. However the Respondent No.2 would purchase Flat No.503, Century Sheelavihar Colony, Behind Hotel Kimaya, Near Kothrud Flyover, Kothrud, Pune, admeasuring 469 sq.ft. carpet area out of the sale proceeds of the existing flat.

II) Undertaking to the aforesaid effect to be filed by the

Respondent No.2 within two weeks from date.

III) The said flat would be purchased in the name of minor Saniya and that the documents would be executed by the Respondent No.2 in the name of Saniya.

VI) The arrangement as contemplated by clauses 1, 2 and 3 of the Consent Terms filed in P. A. No.417 of 2008 would continue to operate, to which both the Learned Counsel Mr. U. R. Mankapure for the Petitioner and Mr. Varad Deore for the Respondents have no objection. It is expected that the Petitioner and the Respondents would co-operate so that the said arrangement is abided by the parties.

6 With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]