

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 126 OF 2015
IN
WRIT PETITION NO. 8149 OF 2014

Mr. Jaiprakash Bansilal Raka & Anr. .. Petitioners
VS.
Mrs. Santoshkumari Lakhpat Mehta .. Respondent

Mr. Shriram S. Kulkarni for Petitioners.
Ms Santoshkumari Lakhpat Mehta – Respondent present in person.

CORAM : M. S. SONAK, J.
DATE : 10 MARCH 2016

P.C :

1] Heard Mr. Kulkarni, the learned counsel for the review petitioners and Ms Santoshkumari Lakhpat Mehta, the respondent in person.

2] Ms Mehta initially applied for keeping back the matter by representing that her Advocate will be coming shortly. The matter was accordingly kept back. When the matter was recalled, Ms Mehta stated that her husband is to argue this matter and the husband has presently gone to Pune to remove the plaster and therefore, the husband cannot come to the Court.

3] In the past, this review petition has been adjourned from time to time. Since, some allegations were made by the respondent against the court and it was represented that transfer has been applied for, the matter was adjourned on the said ground as well. In these circumstances, adjournment was declined and Ms Mehta was

heard in person.

4] The respondent in this review petition had instituted writ petition no. 8149 of 2014 to impugn the order dated 19 August 2014 made by the appeal court directing the respondent to deposit compensation at the rate of Rs.10,000/- per month as a condition for stay upon the execution of eviction decree made by the trial court. The respondent, through her learned counsel, represented to this court that the financial position of the respondent is quite precarious and further, she is required to take care of her son who has some special needs and for which, considerable expenditure is required to be incurred each month. Even, certificate from Sancheti Institute for Orthopedics & Rehabilitation was produced on record.

5] This court, upon appreciating the financial condition of the respondent as also the circumstance that her son was requiring special needs on account of his physical condition partly allowed the petition and reduced the compensation amount from Rs.10,000/- per month to Rs.7,000/- per month. Substantial time was also granted to the respondent for clearing the arrears.

6] In this review petition, the petitioners landlords, have placed voluminous material on record to indicate that the respondent is a very rich person having several movable and immovable properties. The review petitioners have also filed an additional affidavit dated 7 December 2015 to point out that even during the pendency of this

review petition, the respondent has purchased a flat admeasuring 1141.2 sq. ft. at Marine Drive, Mumbai, at cost of over Rupees One Crore. Mr. Kulkarni, the learned counsel for the review petitioners has submitted that the respondent has abused the process of this court, played a fraud on this court by way of not just suppression but also, making false representations to this Court with regard to her financial position. For all these reasons, Mr. Kulkarni submitted that this court ought not only review and recall its order dated 17 July 2015 but must further, saddle the respondent with exemplary costs.

7] The respondent, who has appeared in person has stated that she and her family are depending upon the income from the suit premises, which are two shops. She has submitted that although, they may have several other properties or businesses, they are making losses and therefore, the order may not be reviewed.

8] Rival contentions now fall for determination.

9] The order dated 17 July 2015, by which the compensation amount was reduced from Rs.10,000/- per month to Rs.7,000/- per month was clearly made on the basis of the case presented by the respondent that her financial position was weak and further, she was required to take care of her son who has some special needs. It is only on these basis that the compensation amount of Rs.10,000/- per month was reduced to Rs.7,000/- per month.

10] Along with review petition filed by the petitioners landlords the following disclosures have been made with regard to immovable properties owned and possessed by the respondent and her husband.

List of commercial properties owned by Respondent and her husband:

Sr.	Property Location	Property Type	Property Address	Description of Property	Name of owner	Size Sq. Mtrs.	Size in Sq.Ft.	Purchased Year	Registration No.
1	Chinchwad	Commercial	CTS No. 4668, MB Classic, Chichwad Station, Pune 411019	Shop No. 19	Mrs. Santosh L. Mehta	15.61	167.9636	2003	4784.2003
2	Chinchwad	Commercial	CTS No. 4668, MB Classic, Chichwad Station, Pune 411019	Shop No. 18	Mrs. Santosh L. Mehta	16.94	182.2744	2003	4783.2003
3	Chinchwad	Commercial	CTS No. 4668, MB Classic, Chichwad Station, Pune 411019	Shop No. 23	Mrs. Santosh L. Mehta	25.42	273.5192	2003	4782/2003
4	Pimpri	Commercial	CTS No. 4700, Jewel Office Pimpri Pune 18	Office Nos. 1, 2, 3, 27, 28, 29	Lakhpatraj Sampatraj Mehta	274.34	2951.8984	2005	2080/2005
5	Chinchwad	Commercial	CTS No. 4663, Prestige Complex, Shop No. 11, Chinchwad, Pune 19	Shop No. 11	Mrs. Santosh L. Mehta	24.8	266.848	1995	5845/1995
6	Chinchwad	Commercial	CTS No. 4663, Prestige Complex, Shop No. 16, Chinchwad, Pune 19	Shop No. 16	Mrs. Santosh L. Mehta	24.8	266.848	1995	5844/1995

3663.3 4109.3516

List of residential properties owned by Respondent and her husband:

Sr.	Property Location	Property Type	Property Address	Description of Property	Name of owner	Size Sq. Mtrs.	Size in Sq.Ft.	Purchased Year	Registration No.
1	Chinchwad	Residential	CTS No. 4668, MB Classic, Chinchwad	Flat No. 27B	Lakhpatraj Sampatraj Mehta Mrs. Santosh L. Mehta	91.82	987.9832	2006	7779/2006
2	Chinchwad	Residential	Flat No. 1, Prestige Complex, Bldg No. Pune 411019	Flat No. 1	Lakhpatraj Sampatraj Mehta Mrs. Santosh L. Mehta				

11] In addition to the aforesaid, the review petitioners have pointed out that the respondent is a partner in firm Shitala Associates which is carrying on business of construction in and around Pune. It is averred that the partnership firm is undertaking construction of a building complex comprising 7 and 14 floor structures at Mamurdi, Pune and from out of the sale of most of the tenements therein, the respondent, in her capacity as partner of the firm has earned a huge income. There is further reference to monthly periodical under the name of 'Courage' and 'Voice wherein the respondent and her son have stake. It is also pointed out that the respondent and her sons are directors and owners of company by name Corporate Chits (India) Pvt. Ltd., which is carrying on the business of chit funds. Despite all this, the review petitioners have pointed out that the respondent made false representation that her son Alpesh is mentally retarded and require expenses of Rs.3,00,000/- per month. There is reference to other immovable properties, in which, the respondent has interest.

12] The review petitioners have also filed an additional affidavit, placing on record the purchase of apartment at Marine Drive, Mumbai by the respondent during the pendency of the review petition.

13] In the affidavit in reply filed by the respondent, significantly there is no denial with regard to the ownership of most of the

immovable properties. Rather, it is contended that the respondent had never concealed the facts that she possessed the aforesaid immovable properties. The respondent has however not pointed out where such disclosures were ever made. In the affidavit, it is stated that the respondent has obtained huge loans from banks and is therefore due and payable crores of rupees to banks. In paragraph 20 of the affidavit in reply, the respondent has averred thus :

*“20. I say that, it is also pertinent to note that, the Respondent have never concealed the facts that the respondent possessed the above mentioned premises, in fact it is pertinent to note that the said premises are being used as the godown / warehouse, storage as due to the location of the said premises same could not be used for the purpose of the selling the goods / material which are being sold in the suit premises, it is further pertinent to note that the Respondent have secured Loan on the said premises and on the said premises and it is used as the for the storage and no separate income is derived from the said premises. Annexed hereto and marked as **EXHIBIT 'B' Colly** are the copies of the several loans secured by the Respondent on the said properties.”*

14] From the aforesaid, it is more than apparent that the respondent has abused the process of this court. The respondent has suppressed material and valid documents not just from this court but also from the appellate court whose order she had impugned in writ petition no. 8149 of 2014. The respondent clearly

represented that she is in no financial position to even deposit compensation of Rs.10,000/- per month as a precondition for stay of the eviction decree and further, she is required to take care of her son who has special needs and therefore, warrants considerable expenditure each month. All these were patently false and fraudulent representations which were made by the respondent for the purposes of persuading this court to make the order dated 17 July 2015. This is more than sufficient reason to review and recall the order dated 17 July 2015 and thereafter, to dismiss writ petition no. 8149 of 2014.

15] The Hon'ble Supreme Court in the case of **S. P. Chengal Varaya Naidu (dead) by LRS vs. Jagannath (dead) by LRS & Ors.**¹ has held as follows:

"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/decreed - 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.

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

1 (1994) 1 SCC 1

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 no right to approach the court. He can be summarily thrown out at any stage of the litigation.**

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.***

[Emphasis supplied]

16] The aforesaid observations aptly apply to the abuse of process resorted to by the respondent in the present case.

17] In the facts and circumstances of the present case therefore, this review petition is allowed, the order dated 17 July 2015 made in writ petition no. 8149 of 2014 is hereby recalled and writ petition no. 8149 of 2014 is dismissed with costs of Rs.1,00,000/- (Rupees One Lac) payable by the respondent to the review petitioners within a period of four weeks from today. The appeal court, before whom, the respondent's appeal is pending to ensure that such costs are indeed paid by the respondent to the review petitioners within a period of four weeks from today, failing which the appeal court,

shall be at liberty to make appropriate orders in the pending appeal.

18] Further, the review petitioners, shall be at liberty to file appropriate applications before the appeal court for enhancement of amount of compensation, *inter alia*, on the basis of material which the respondent has suppressed, even from the appeal court. Such application if made, shall be disposed of by the appeal court as expeditiously as possible and in any case, within a period of six weeks from the date of making of such application.

19] The review petition as well as the writ petition no. 8149 of 2014 are disposed of in the aforesaid terms.

20] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)