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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2996 OF 2015
WITH
WRIT PETITION NO. 3000 OF 2015

Shri Pralhad Harishchandra Khandelwal & others .. Petitioners
Vs.

Dr.Ravindra Gangadhar Ghatnekar
Since deceased through the legal representatives
1a. Mrs.Sudha Gangadhar Ghatnekar and others .. Respondents

Mr.A.V. Anturkar, Senior Advocate i/b Mr.Sugandh B.Deshmukh, for
the Petitioners.

Mr.Dilip Bodake, for Respondents No. 1a to 1f.

CORAM : R.G.KETKAR, J.
DATED : 22nd MARCH, 2016

P.C.

. Heard Mr.A.V. Anturkar, learned Senior Counsel for the
petitioners and Mr.Dilip Bodake, learned Counsel for respondents
No. 1a to 1f in both the Petitions at length. On the oral application
made by Mr.Anturkar, leave to delete respondents No. 2 & 3 in both
the Petitions is granted. Amendment to be carried out forthwith.
Rule. Mr.Bodake waives service for respondents No. 1a to 1f. By
consent of the parties, rule is made returnable forthwith and the
Petitions are taken up for final hearing.

2. Writ Petition No. 3000 of 2015 is directed against the
judgment and order dated 18/12/2012 passed by the learned Judge,
Small Causes Court, Pune below Exhibit 1 in Regular Darkhast No.

159 of 2009. By that order, the learned trial Judge directed the Judgment Debtors No. 4 to 6 to hand over possession of the premises, as agreed and provide car parking facility to respondents No.1a to 1f, hereinafter referred to as Decree Holders, as per the compromise terms dated 18/06/2007 in Regular Civil Suit No. 3990 of 2000 at Exhibit 71 within a period of 3 months from the date of the order.

3. Writ Petition No. 2996 of 2015 is directed against the judgment and order dated 06/08/2014 passed by the learned Judge, Small Causes Court at Pune below Exhibit 49 in Regular Darkhast No.159 of 2009. By that order, the learned trial Judge directed issue of arrest warrant against the Judgment Debtors No. 4 to 6 and for detaining them in civil prison for one month each for non compliance of order dated 18/12/2012.

4. Mr.Anturkar submitted that Regular Civil Suit No. 3990 of 2000 was instituted by respondents No. 1a to 1f. On 18/06/2007, the parties entered into the compromise and the Suit was disposed of by passing a compromise decree. Under the compromise terms, the Judgment Debtors were obliged to give possession of 540 sq.ft carpet area equivalent to 675 sq.ft. built up area on the ground floor with all ultra modern amenities along with one car parking, against the payment of Rs.1,00,000/- to be paid at the time of delivery of possession of newly constructed structure to Decree Holders. It was

also agreed that premises shall have height of not less than 14 feet. He invited my attention to the schedule attached to the consent terms which provided that Decree Holders are entitled to tenement not less than 550 sq.ft. carpet area equivalent to 675 sq.ft. built up and having height of not less than 14 feet. It was further agreed that the petitioners will shift the lift which was shown in the map attached to the consent terms. He submitted that accordingly, lift was shifted elsewhere and is not subject matter of dispute. The possession of the area admeasuring 573 sq.ft on the rear side of the building was handed over on 17/12/2008. He submitted that Decree Holders instituted Darkhast proceedings on 16/10/2009 for execution of the compromise decree. One of the prayers made in the Darkhast was as the Judgment Debtors (petitioners herein) failed to comply with the decree as per Exhibit 71, the Judgment Debtors be directed to execute the decree. The Court Commissioner may be appointed for execution of the decree and possession be given as per compromise decree under Order 21 Rule 35 of C.P.C. Decree Holders also filed application dated 09/07/2013 for issuing arrest warrant of the Judgment Debtors No.4 to 6 and detaining them in civil prison.

5. He invited my attention to the notice dated 18/05/2009 issued by Decree Holders through advocate Mr.M.P. Bendre and in particular, paragraph 12 thereof. In paragraph 12, it is asserted that on 17/12/2008, possession of the premises was given for the limited

purpose of storage of furniture, instruments and articles as also the affidavit dated 07/09/2014 made by Decree Holder No.1(b) and in particular, paragraph 6 thereof, wherein, it is stated that temporary accommodation presently possessed by Decree Holders which is on the stilt floor. In short, Mr.Anturkar submitted that though the Judgment Debtors handed over possession on 17/12/2008, Darkhast proceedings were filed on 16/10/2009 without disclosing the said fact. He invited my attention to Order 21 Rule 32 of the Code of Civil Procedure, 1908 and submitted that the learned trial Judge has not dealt with the aspect as to whether the Judgment Debtors handed over possession or not and that whether they have willfully failed to obey the decree passed against them.

6. On the other hand, Mr.Bodake supported the impugned orders. He submitted that a moot question is whether the Judgment Debtors have handed over possession strictly in accordance with the compromise decree entered into between the parties. He further submitted that basically the Judgment Debtors have not handed over possession as per the consent decree. Mr.Bodake further states that Decree Holders No.1a and 1e are present in the Court. Upon taking instructions from them, he submits that by consent, the impugned order may be set side and the application dated 09/07/2013 as also Darkhast proceedings may be restored to the file of the learned trial Judge for deciding it afresh.

7. In view thereof, by consent of the parties, the impugned orders dated 18/12/2012 and 06/08/2014 are set aside.

8. The application dated 09/07/2013 is restored to the file of the Executing Court. The learned trial Judge will decide the Regular Darkhast proceedings de novo and in accordance with law.

9. It will be open to the parties to lead evidence in support of their contentions.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)