

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10210/2015

Smt. Sangeeta Ramchandir ... Petitioner

Vs.

Umesh Vasu Shetty & Anr. ... Respondents

Mr. Pankaj R. Thatte for the petitioner
Ms. Shetal Malvankar for the respondent No.1

CORAM : K. K. TATED, J.
DATE : JUNE 16, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India, the petitioner - defendant No.1 challenges order dated 06.08.2015 passed by the Bombay City Civil Court at Mumbai in execution application No.22/2013 in L.C.Suit No.2440/2010 directing the defendant No.1 to comply with clause 2 of the decree in L.C.Suit No. 2440/2010 regarding execution of conveyance within one month from the date of order.

2. In the present proceedings, the respondent plaintiff instituted L.C.Suit No.2440/2010 in the Bombay City Civil Court at Mumbai for various reliefs against defendant No.1, which was decreed by the trial court by judgment and decree dated 03.09.2012. The operative part of the said decree reads thus:.

ORDER

- “1. Suit is partly decreed with cost as under:
2. Defendant No.1 is hereby directed to form the necessary Cooperative Society of the unit holders of Kuber Building and convey Kuber building along with land beneath it to the extent of FSI consumed for construction of the suit building in favour of the society and to do all the facts and deeds, matters and things necessary for effectively transferring, conveying and vesting the same into the society and comply the statutory obligations within a period of 3 months from the order.
3. Defendant No.1 is further directed to obtain occupation certificate of the Kuber Building within a period of 3 months from this order.
4. It is hereby declared that approval/sanction granted by defendant No.2 vide plans sanctioned under NO.CE/9812/BSII/AK dated 22.07.2009 and further approval on 23.12.2009 in favour of defendant No.1 is bad in law and illegal, therefore, same is set aside.
5. It is further declared that construction of vertical and horizontal extension of Kuber Building done by defendant No.1 in pursuance of sanctioned plan dated 22.07.2009 and 23.12.2009 is illegal and bad in law.
6. Defendant NO.1 is directed to demolish the construction carried out by her contrary to the sanction/ approved plans of the year 1994 vide exhibit 13 to 17 at the Kuber Building.
7. Defendant No.1, her servants, agents, any other person claiming through her are hereby permanently restrained from carrying out any addition/ alteration to the suit building contrary to approved plans of the year 1994 (exhibit 13 to 17).
8. Decree be drawn up accordingly.
9. Suit is disposed of accordingly.”

3. Thereafter the petitioner No.1 preferred first appeal No.1582/2012 challenging the decree passed by the trial court, which was admitted by this court on 11.10.2015. In that appeal, the defendant No.1 made civil application No.3935/2012 for stay of the judgment and decree dated 03.09.2012 passed by the trial court. At the time of hearing of the said civil application, the counsel for the petitioner defendant No.1 made a statement before this court that they are seeking stay of item Nos.4 to 6 of the impugned judgment and decree dated 03.09.2012. Accepting the statement made by the learned counsel for the petitioner defendant No.1, this court passed order dated 13.11.2013 in civil application No.3935/2012 staying the judgment and decree 03.09.2012 as regards item Nos.4 to 6 till hearing and final disposal of the first appeal. Thereafter the respondent plaintiff made execution application No.22/2013, wherein the court, by order dated 16.08.2015 directed defendant No.1 to execute the conveyance in respect of the property in favour of society formed by the original plaintiff. Hence, the Writ Petition.

4. The learned counsel for the defendant No.1 submits that the trial court failed to consider the fact that it is not possible for defendant No.1 to execute the conveyance in respect of the part of the land on which the plaintiff society's building is situated. He submits that in the said plot of land, they constructed in all three buildings. Therefore, by executing conveyance only in favour of the society by dividing the said plot, is not possible. Hence, the order passed by the executing court dated 16.08.2015 is required to be set aside.

5. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the Writ Petition. She submits that the judgment and decree passed by the trial court is stayed by this court by order dated 13.11.2013 only as regards item Nos.4 to 6. This itself shows that defendant No.1 agreed to comply with the remaining terms and conditions of the decree. Hence, there is no question of entertaining the Writ Petition.

6. Heard both sides at length. There is no dispute in the present matter that at the time of passing the order dated 13.11.2013 in civil application No.3935/2012 in first appeal No.1582/2012 challenging the judgment and decree dated 03.09.2012, the petitioner defendant No.1 on their own made a statement before this court that the stay may be as regards to item Nos.4 to 6 only of the decree. That civil application was disposed of by this court recording the statement on behalf of defendant No.1. The said order reads thus:

“1. Heard learned advocates on both sides. Learned advocate for the applicants clarified that the applicant is seeking stay of item nos. 4,5 and 6 of the impugned judgment and decree dated 3rd September, 2012. Heard on this aspect of the matter. Specific directions are given for demolition of the construction already carried out and certain other declarations are also granted. Since the first appeal is admitted, it would be proper to stay the judgment and decree as regards item nos. 4, 5 and 6 of the impugned judgment. Accordingly, following order is passed to dispose of this Civil Application.

ORDER

(i) Till the disposal of the First Appeal, the judgment and decree dated 3rd September, 2012 passed by the learned Judge of the City

Civil Court at Bombay in S.C. Suit No.2440 of 2010 as regards item nos.4, 5 and 6 is stayed.

(ii) There shall be no order as to costs.”

7. As the defendant No.1 failed and neglected to comply with remaining clauses of the decree, the plaintiff made execution application No.22/2013 wherein the executing court directed defendant No.1 to execute the conveyance in respect of the land where the society building was constructed by the defendant No.1. Bare reading of the order passed by this court dated 13.11.2013 in civil application No.3935/2012 shows that defendant No.1 sought stay of item No.4 to 6 of the impugned decree only. Hence, I do not find any error committed by the executing court at the time of passing the final order dated 06.08.2015 directing defendant No.1 to execute the conveyance in favour of the society within stipulated time. Hence, the Writ Petition stands dismissed.

8. At this stage, the learned counsel for the petitioner seeks some time to comply with the impugned order. At his request, 2 months time is granted to do so.

JUDGE