

Sequeira

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

***CIVIL APPLICATION NO. 1503 OF 2014
IN
SECOND APPEAL NO. 818 OF 2006
Along with
CIVIL APPLICATION NO. 210 OF 2015***

Shri Pandurang Shivram Sapat

Since deceased through his legal heirs
and representatives

1a Shri Yeshwant Pandurang Sapat & ors. .. Applicants

Vs.

Shri Vivek Vaijanath Gupte & ors. .. Respondents

Mr.K.S.Dewal, for Applicants in C.A. No.1503 / 2014 and
Respondent No.1-A in S.A. No.818 /2006.

Mr.Vinay Bhate, for Appellants in S.A. No.818 / 2006 and
Applicants in C.A. No.210 of 2015.

Ms.Nikita Jacob i/b S.K.Legal & Asso., for Respondent No.6 in S.A
No.818 / 2006.

***CORAM: N.M. JAMDAR, J.
Saturday, 02 April 2016.***

Oral Order :

Civil Application No.1053 of 2014 is taken out by the Respondents in the Second Appeal for dismissal of the Second Appeal in view of the default and breach committed by the Appellants of the undertaking given by them. The Civil Application No.210 of 2015 is taken out by the Appellants for extension of time to execute cancellation of Sale deed as per the undertaking.

2. Second Appeal is filed by the Appellants challenging the Judgment and Decree passed by the Civil Judge (Senior Division) Thane decreeing the suit on 16 November 1988 to execute the Sale deed in favour of the Respondents in the Appeal. The Appeal filed by the Appellants herein was dismissed by the learned District Judge, on 18 January 2005. Second Appeal was filed, which was remanded back on a limited issue. The learned District Judge, on 29 April 2006 on remand dismissed the Appeal. Thereafter the present appeal was admitted and a statement made by the Respondents that decree will not be executed, was accepted by the Court. A statement was made by the Appellants that they will not create third party rights, on 11 December 2012 in a Civil Application taken out by the Respondents which was accepted by the Court. Since the Appellants created third party rights in breach of their undertaking by executing a Sale deed on 4 June 2014, Contempt proceedings were taken out by the Respondents which were disposed of by the following order on 2 December 2014.

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7. *Heard both sides at length. It is to be noted that in the present proceedings, the Petitioners allege that the Respondents have committed wilful disobedience and breach of the order dated 11/12/2012 passed by this court in Civil Application No.1983/2012 in the present second appeal. The prayer clause (a) of the present Contempt Petition reads thus:*

“(A) That this Hon'ble Court be pleased to declare

and hold that the Respondents herein are guilty of having committed contempt of and/or wilful disobedience and breach of the order dated 11/12/2012 passed by this Hon'ble Court in Civil Application No.1983/2012 filed in Second Appeal No.818/2006 and have also acted in breach of the undertaking and/or statement made before this Hon'ble Court which was accepted by this Hon'ble Court at the time of hearing of the said Civil Application No.1983/2012 and this Hon'ble Court may be pleased to take appropriate action against the Respondents for such act of contempt and/or wilful disobedience under the provisions of the Contempt of Courts Act, 1971 and/or any other law in force and they may be severely dealt with accordingly."

8. *The order dated 11/12/2012 shows that on that day, Mr. R. S.Apte, Senior Advocate appeared on behalf of the Respondents (original Appellants) with Mr. Vaibhav Patankar, Advocate on record. The record and proceedings show that Adv. Mr. Patankar has filed his vakalatnama on behalf of Respondent Nos.4 and 5 only. Though it is recorded in paragraph 2 of the order dated 11/12/2012 that the Advocate appearing for the Respondents made a statement on behalf of the Defendants that they "do not intend to create any third party rights pending the Appeal and if any rights are to be created, the said Respondents would seek permission of this court" this should be read as on behalf of original Appellant i.e. Respondent Nos.4 and 5. This itself shows that none appeared on behalf of the other Respondents except Respondent Nos.4 and 5. Hence, the contempt petition is not maintainable against other Respondents.*

9. *The Respondent Nos.4 and 5 filed their affidavit-cum-undertaking dated 02/12/2014 stating that by mistake and because of old age, they executed the sale deed though there was order dated 11/12/2012 passed by this court. They already given undertaking to this court*

that they will take appropriate steps to cancel the registered sale deed dated 04/08/2012 and would place on record a copy thereof within two weeks from the date of registration. Undertaking given by them is accepted.

10. Considering the above mentioned facts and the undertaking given by Respondent Nos.4 and 5, I am of the opinion that it is not necessary to entertain the present contempt petition. Hence, the Contempt Petition is rejected.'

As the above order would show the original Appellant was to execute the cancellation deed within period of ten weeks i.e. ten weeks from 2 December 2014. Since inspite of this undertaking the deed for cancellation has not been executed, the Civil Application No.1503 of 2014 was taken out by the Respondents. Civil Application No.1503 of 2014 was also on board for consideration and in view of the undertaking given by the original Appellant, rule was issued in the Civil Application and ad-interim relief in favour of the Respondents was granted accepting the undertaking given by the Appellants.

3. I have heard learned counsel for the parties. It is clear from the record and it is an admitted position that Sale deed has been executed after the undertaking. When the undertaking of the original Appellant was in force such Sale deed obviously could not have been executed and no rights therefore, would flow from such Sale deed. As regards the purchaser who is now joined to the Civil Application No.1503 of 2014, the said purchaser will have his remedy in law against the Appellants as regards damages, etc. but that would not make the title conferred pursuant to such Sale deed

legally and valid. In spite of the undertaking given by the Appellants, the Appellants have still not executed the cancellation deed. The learned counsel for the Appellants has sought to urge various difficulties, however the Civil Application for extension of ten weeks is taken out a year back so the Appellants have already availed of more time than it is sought for in the application.

4. The conduct of the Applicants is of aggravated nature and I would have proceeded to take *suo motu* cognizance of the conduct today itself however, by way of indulgence the prayer for ten weeks to execute the cancellation deed can be considered in the interest of justice. At the same time the repeated breach committed by the Appellants cannot be lost sight of. The proceedings arise from Specific Relief Act, 1963 and the jurisdiction of the Court under Specific Relief Act is in equitable jurisdiction. Having invoked the jurisdiction of this Court if the Appellants are breaching the orders of this Court with impunity the Appellants will not be entitled to be heard on merits. Therefore, the prayer made by the Respondents in their Civil Application is justified and will have to be granted. However, since I am inclined to grant ten weeks extension from today to the Appellants to execute the cancellation deed, both the Civil Applications are disposed of as under -

- i) Civil Application No.210 of 2015 is allowed in terms of prayer clause (a).
- ii) In Civil Application No.1503 of 2014 prayer clause (a) stands

granted. However this order allowing prayer clause (a) will take effect after period of ten weeks from today and if no cancellation deed is executed by the original Appellant and the copy of the cancellation deed is placed on affidavit by the Appellants on the record of this Court with copy of the cancellation deed to the counsel for the Respondents, within period of ten weeks.

iii) As regards prayer clause (b) of Civil Application No.1503 of 2014, the same shall continue till further orders subject to the clause (ii) above. For sake of clarity, prayer clause (b) will continue if the Appeal is not dismissed, as envisaged above.

(N.M.Jamdar, J.)