IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 327 OF 2016
WITH
CIVIL APPLICATION NO. 4332 OF 2015
WITH
CIVIL APPLICATION NO. 1647 OF 2016
WITH
CIVIL APPLICATION 3262 of 2016
WITH
CIVIL APPLICATION NO. 4808 OF 2016

Mr. Amrutbhai M. Mistry …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 328 OF 2016
WITH
CIVIL APPLICATION NO. 4327 OF 2015
WITH
CIVIL APPLICATION NO. 1648 OF 2016
WITH
CIVIL APPLICATION NO. 3257 OF 2016
WITH
CIVIL APPLICATION NO. 4810 OF 2016

Mr. Kantibhai J. Patel …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 329 OF 2016
WITH
CIVIL APPLICATION NO. 4328 OF 2015
WITH
CIVIL APPLICATION NO. 1649 OF 2016
WITH
CIVIL APPLICATION NO. 3270 OF 2016
WITH
CIVIL APPLICATION NO. 4809 OF 2016

Mrs. Narmadaben K. Patel …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 330 OF 2016
WITH
CIVIL APPLICATION NO. 4329 OF 2015
WITH
CIVIL APPLICATION NO. 1650 OF 2016
WITH
CIVIL APPLICATION NO. 3259 OF 2016
WITH
CIVIL APPLICATION NO. 4811 OF 2016

Mr. Kalidas B. Patel …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 331 OF 2016
WITH
CIVIL APPLICATION NO. 4331 OF 2015
WITH
CIVIL APPLICATION NO.1651 OF 2016
WITH
CIVIL APPLICATION NO. 3267 OF 2016
WITH
CIVIL APPLICATION NO. 4812 OF 2016

Mr. Bhupendra M. Patel …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 332 OF 2016
WITH
CIVIL APPLICATION NO. 4333 OF 2015
WITH
CIVIL APPLICATION NO. 1653 OF 2016
WITH
CIVIL APPLICATION NO. 3264 OF 2016
WITH
CIVIL APPLICATION NO. 4813 OF 2016

Mr. Rajiv Vishwakarma …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 333 OF 2016
WITH

CIVIL APPLICATION NO. 4330 OF 2015
WITH
CIVIL APPLICATION NO. 1654 OF 2016
WITH
CIVIL APPLICATION NO. 3271 OF 2016
WITH
CIVIL APPLICATION NO. 4815 OF 2016

Mr. Rajan Save s/o. Raghunath Save …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

WITH
FIRST APPEAL NO. 334 OF 2016
WITH
CIVIL APPLICATION NO. 4326 OF 2015
WITH
CIVIL APPLICATION NO. 1652 OF 2016
WITH
CIVIL APPLICATION NO. 3254 OF 2016
WITH
CIVIL APPLICATION NO. 4814 OF 2016

Mr. Hiragaurihansora …Appellant
Versus
Mr. Kanaiyalal Purshottamdas Shah & Ors. …Respondents

Mrs. Anjali R. Awasthi a/w. Nitesh Acharya i/b Mr. Moin Khan for the Appellants.
Mr. S.N. Vaishnav a/w. Ms Nupur Mukharjee i/b Mr. Vipul Shukla for Respondent Nos.1 to 4, 7,8 and 10.

CORAM : M. S. SONAK, J.
DATE : 10 FEBRUARY 2017.

P.C. :-

1] All these appeals can be disposed of with a common order.

2] The challenge in these appeals is to the judgments and orders dated 7 September 2015 made by the City Civil Court, Mumbai dismissing the appellants' chamber summons under Order 21 Rule

97 of the Code of Civil Procedure, 1908 (CPC) seeking *inter alia* a declaration that the decree in Suit No. 1173 of 1971 dated 15 April 1997 is in executable against the appellants.

3] The decree dated 15 April 1997 was obstructed by about 34 obstructionists, who had taken out chamber summons, similar to the chamber summons, which has now been dismissed by the impugned judgments and decrees dated 7 September 2015. The orders dismissing such other chamber summons are also dated 7 September 2015 and are virtually identical to the impugned judgments and orders dated 7 September 2015 (impugned judgments and orders). As against such orders, almost 18 persons instituted separate appeals before this court in the first instance. By detailed judgment and order dated 24 February 2016, all such appeals and the civil applications therein came to be dismissed.

4] About 17 persons out of 18 as aforesaid, instituted Special Leave Petition Nos.13566-13597 of 2016 before the Hon'ble Supreme Court, which came to be dismissed by common order dated 6 May 2016, which reads thus:

> *"Upon hearing the counsel the Court made the following*
>
> *O R D E R*
>
> *Heard learned senior counsel for the petitioners.*
>
> *No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India.*
>
> *The special leave petitions are accordingly dismissed.*
>
> *As a sequel to the above, pending interlocutory applications also stand disposed of.*
>
> *Having heard learned senior counsel for the petitioners at great length, we consider it just and appropriate to direct all the petitioners to vacate and handover peaceful possession of the premises in their occupation on or before 31.07.2016."*

5] Thereafter, 3 more persons from out of 34 obstructionists, instituted the appeals questioning the orders dated 7 September 2015. These first appeals were also dismissed by detailed judgment and order dated order dated 5 October 2016.

6] These 8 appeals are again, instituted by 8 out of 34 obstructionists, seeking to execute the decree dated 15 April 1997. Therefore, for the reasons set out in the judgments and orders dated 24 February 2016 and 5 October 2016, even these appeals are liable to be dismissed. Normally, there cannot be any contradictory orders in a situation of this kind, particularly, when there is no difference in the judgments and orders dated 7 September 2015, which form the subject matter of the appeals.

7] However, Mrs. Anjali R. Awasthi, learned counsel for the appellants, submits that she relies upon certain facts, circumstances and grounds, which are different and distinct from the facts, circumstances and grounds which arose in the appeals disposed of by the judgments and orders dated 24 February 2016 and 5 October 2016. Mrs. A.R. Awasthi submits that for this reason at least, the present appeals are liable to be considered and allowed.

8] In the aforesaid regard, Mrs. A.R. Awasthi made the following submissions in these appeals:

a] The appellants in these appeals, had questioned the judgment and decree dated 15 April 1997, which is being executed against the appellants. Since, there was delay of about 19 years in instituting the appeals against decrees

dated 15 April 1997 application for condonation of delay was taken out. Such applications stand dismissed by order dated 24 February 2016. As against the part of the order dated 24 February 2016, whereby delay was not condoned, the appellants have instituted petitions for review/recall. Therefore, pending decision in such petitions for review/recall, further hearing in the present appeals is required to be deferred;

b] Suit No. 1173 of 1971, in which, the decree dated 15 April 1997 has been made, was in respect of property surveyed under No.118/Hissa No.1. However, at some stage, in a fraudulent manner, a copy of map was brought on record, by way of amendment to the plaint, which included the property surveyed under No.118/Hissa No.2. The suit structures are now found to be located in property bearing Survey No.118/Hissa No.2. Since, this property was included in the suit and consequently, decree, by way of fraud, the decree insofar as structures situated in Survey No. 118/Hissa No.2 is a nullity, which cannot be executed in respect of structures in property bearing Survey No. 118/Hissa No.2;

c] The property in which the suit structures are located, has been declared as "*slum area*" under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment), Act, 1971 (Slum Act). Mrs. A.R. Awasthi submits that before any decree could have been made or before any execution would be levied against such structures

in the "*slum area*", prior permission from the competent authority under section 22 of the Slum Act is mandatory. Since, no such permission has been obtained, the decree dated 15 April 1997 is a nullity. In any case, the execution of such decree, cannot proceed;

d] The names of the appellants are included in "*Annexure-II*" to the scheme of redevelopment of the slum area. Mrs.Awasthi submits that this is an important distinguishing feature between the present appeals and the appellants in the 21 appeals, which have since been dismissed. From this, it is evident that the suit structures are in a slum area and the execution against the same cannot proceed without prior permission from the competent authority in terms of section 22 of Slum Act; and

f] The trial Judge lacked the jurisdiction to entertain and decide the chamber summons taken out by the appellants. In such a matter, it was for the decree holder to take out proceedings to execute the decree and it was not for the appellants to take out in chamber summons to resist the execution of the decree. Mrs. Awasthi submits that even consent cannot confer jurisdiction, where, such jurisdiction is inherently lacking. The impugned order dated 7 September 2015, is therefore, a nullity.

9] After arguments were concluded, Mrs. Awasthi has handed in written submissions, which were kept ready by her. She assures the

court that the written submissions only paraphrase the submissions which she has now made and there are no additional submissions therein. In such circumstances, there is no necessity to advert to such written submissions, particularly, since this order is dictated in the open court soon after conclusion of submissions of learned counsel for the parties. Mrs.Awasthi only added that her submission that the disposal of special civil petitions does not attract the doctrine of merger may also be noted and taken into consideration.

10] Upon hearing Mrs. Anjali R. Awasthi and Mr. S.N. Vaishnav, learned counsel for the parties and upon perusing the material on record, there is really no case to take any view different than the view expressed by the two learned Single Judges of this court in their detailed judgments and orders dated 24 February 2016 and 5 October 2016. No doubt, Mrs. Awasthi may be right in her submission that the dismissal of special leave petitions, by itself, may not attract doctrine of merger. However, that does not mean that these appeals deserve any different treatment, merely on account of one or two additional grounds being urged by the appellants and the rest of the grounds being presented with different packaging material, as in the present case.

11] Since, on the previous occasion, a submission was made that petitions for review/recall are pending, the hearing in these appeals was deferred. Learned counsel for the respondents had opposed any deferment, by pointing out that almost 21 similar appeals have already been dismissed. However, the matters were adjourned to see if any orders are made in the petitions seeking review/recall. It is

however, not possible to defer the hearings in these appeals any longer, particularly, since, the appellants have chosen to question the decree dated 15 April 1997, only in the year 2016 and the application for condonation of delay has been dismissed by a speaking order of considerable length. Most of the issues raised in these appeals stand covered by the judgments and orders dated 24 February 2016 and 5 October 2016. The special leave petitions were not only dismissed by Hon'ble Supreme Court, but further, specific directions were issued to the obstructionists to vacate and hand over the physical possession of the premises in their occupation on or before 31 July 2016.

12] The ground that the decree is a nullity because it was obtained by fraud, is quite a frivolous ground, in the facts and circumstances of the present case. Admittedly, the trial court permitted amendment of the plaint and the introduction of a plan/map so as to cover the structures located in property surveyed under No.118/Hissa NO.2 as well. Mere circumstance that such property was not included in the suit as originally framed, but the same was introduced by way of amendment, does not render the eventual decree, a product of fraud or a nullity. Further, it is to be noted that this ground was not even raised before learned trial Judge and has now perhaps been raised only to urge that there is some difference in 21 appeals already disposed of and the present set of appeals. This is impermissible and there is no merit in the ground raised.

13] The ground based upon section 22 of the Slum Act has been considered and rejected in the order dated 7 September 2015. Such

ground was raised and rejected in 21 appeals disposed of by judgments and orders dated 24 February 2016 and 5 October 2016. As against, the judgments and orders dated 24 February 2016, even the special leave petitions, in almost 17 cases have been dismissed. Accordingly, there is no case made to take any different view in these said appeals.

14] The contention that names of the appellants in the two appeals were not included in Annexure-II and therefore, there is a distinction in these appeals, is also not well founded. The appellants, in the course of cross-examination were specifically asked to indicate whether there is any material to link the structures referred to in Annexure-II with the suit structures. The appellants failed to furnish any clear response to such query. There is, accordingly, no material on record to establish nexus with the structures referred to in Annexure-II and the suit structures covered under the decree dated 15 April 1997. The appellants were required to place cogent material in this regard, which they have failed. In such circumstances, the contention based upon the provisions of section 22 of the Slum Act were rightly rejected even in the case of present appellants.

15] The ground that the trial Judge lacked jurisdiction is completely misconceived. The impugned order decides whether the obstructionists have made out any case to obstruct the execution of decree. The circumstance that the appellants themselves filed chamber summons and pursued them for the last four to five years and on the basis of the same continued to resist the decree, does not in any way render trial court as a court having not inherent

jurisdiction to decide the matter. In fact, such a submission, which was never raised earlier, is quite misconceived and aimed at protracting the execution proceedings without reasonable cause. Accordingly, this ground is also rejected.

16] In this case, as pointed out by Mr. S.N. Vaishnav, the appellants claim through defendant No.2. In such a situation, there is no question of the appellants resisting the execution of the decree dated 15 April 1997. The appellants do not appear to have set up any independent right in themselves. In the absence of any independent right, the appellants cannot resist execution of the decree which binding against original defendant No.2 in the suit and the appellants claim through defendant No.2. This is an additional reason for not interfering with the impugned judgments and orders.

17] In ***Satyawati v. Rajinder Singh and anr. - (2013) 9 SCC 491***, the Hon'ble Supreme Court has made the following observations, in the context of execution of decrees.

> *12. It is really agonising to learn that the appellant-decree-holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January 1996.* ***As stated hereinabove, the Privy Council in General Manager of the Raj Durbhunga v. Coomar Ramaput Sing had observed that the difficulties of a litigant in India begin when he has obtained a decree.*** *Even in 1925, while quoting the aforestated judgment of the Privy Council in Kuer Jang Bahadur v. Bank of Upper India Ltd the Court was constrained to observe that: (AIR p. 448)*
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> > ***"Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtors in such a way as to make***

courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

13. *In spite of the aforestated observation made in 1925, this Court was again constrained to observe in Babu Lal v. Hazari Lal Kishori Lal in para 29 that: (SCC p. 539)*

"29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections."

14. *This Court, again in Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. was constrained to observe in para 4 of the said judgment that: (SCC p. 326)*

"4. … it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. ***It is true that proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time.****"*

15. *Once again in Shub Karan Bubna v. Sita Saran Bubna at para 27 this Court observed as under: (SCC p. 699)*

"27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. ***The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore,***

> ***to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant."***
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> ***16.*** *As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.*
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> ***17.*** *We are sure that the executing court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice."*
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> ***(emphasis supplied)***

18] In ***Ravinder Kaur v. Ashok Kumar and anr. - (2003) 8 SCC 289***, the Hon'ble Supreme Court did approve the conduct of the judgment debtor in raising frivolous objections based upon identity of the suit property and delaying the execution of the decree. The following observations in paragraph 22 are relevant :

> *"22. ….**That is also why they prayed for restoration of possession. Therefore, raising a dispute in regard to the description or identity of the suit schedule property or a dispute in regard to the boundary of the suit schedule property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system".***
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> *(emphasis supplied)*

19] For all the aforesaid reasons, these appeals are dismissed. The civil applications referred to in the cause title, do not survive and the same are also disposed of. In the facts and circumstances of the present case, there shall, however, be no order as to costs.

20] At this stage, learned counsel for the appellants seeks extension of the ad-interim relief by a period of eight weeks. In the facts and circumstances of this case, there is no reason to grant any further indulgence to the appellants. Mrs. Awasthi submits that in the connected appeals such indulgence was granted. However, the appellants in the connected appeals, in pursuance of such indulgence, did institute special leave petitions before the Hon'ble Supreme Court, which special leave petitions came to be dismissed with direction to the petitioners to vacate the structures by 31 July 2016.

(M. S. SONAK, J.)

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