

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 636 OF 2015

Shri. Dhananjay Subhashrao Deshmukh	...Applicant
<i>Versus</i>	
Shri. Sahebrao Parvat Gavali	...Respondent

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Mr.Sulbha A. Dhamale, Advocate for the Applicant.
Mr.S.D. Patil i/b. Deeplaxmi S. Matwankar, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 16th JANUARY, 2017

P.C.

1. Heard Ms.Sulbha Dhamale, learned Counsel for the applicant and Mr.S.D. Patil, learned Counsel for the respondent, at length.

2. By this application under Section 115 of C.P.C., the applicant, hereinafter referred to as the 'judgment debtor' has challenged the judgment and order dated 1.10.2015 passed by the learned Jt. Civil Judge, Junior Division, Pimpalgaon (B) below Exhibit-55 in Regular Darkhast No.28/2014. By that order, the learned trial Judge rejected the application made by the judgment debtor for disposing of the Darkhast thereby

discharging him in view of failure of the decree holder to comply the mandate as per clause-3 of the compromise decree dated 23.4.1997 passed in R.C.S. No.53/1997.

3. Hausabai Deshmukh, predecessor in title of the judgment debtor had instituted that suit against the respondent, hereinafter referred to as the 'decree holder' for perpetual injunction. The suit was disposed of in terms of compromise purshis dated 23.4.1997. It was decided that the defendant therein will not interfere with the plaintiff for cultivating the suit land. However, if the plaintiff intends to sell the suit land in future, the defendant will have preferential right to purchase the suit land. All of sudden, the predecessor in title of the judgment debtor started negotiating with the third person for selling the suit property. The decree holder therefore approached the judgment debtor to act upon the compromise purshis dated 23.4.1997. As the judgment debtor did not comply with the requisition contained therein, he was constrained to institute suit being R.C.S. No.180/2011 for declaration and injunction. By judgment and decree dated 3.3.2014, the learned trial Judge decreed the suit. Clause-3 of the operative part of the order reads thus :

“[3] It is hereby declared that the plaintiff, subject to compliance of terms in compromise pursis in Reg.Civil Suit No.53/1997 (Exh.16) and subject to willingness of the defendant to sale out the suit land in future, is entitled to claim preemptive right to purchase the suit land.”

4. The learned trial Judge declared that the decree holder, subject to compliance of terms in compromise pursis in R.C.S. No.53/1997 (Exhibit-16) and subject to willingness of the defendant to sell out the suit land in future, is entitled to claim preemptive right to purchase the suit land.

5. It is the case of the judgment debtor that he had issued notice on 14.8.2014 calling upon the decree holder to pay Rs.54 Lakhs being the market value of the suit property. In that notice it was set out that S/shri. Jagannath Prabhakar Gavali and Nitin Madhukar Gavali, agriculturists in Narayan Tembhi village are ready and willing to purchase the suit property for market value which is Rs.54 Lakhs. Judgment debtor, therefore, called upon the decree holder to attend the office of the Tahsildar, Niphad between 11:00 a.m. and 5:00 p.m. together with Rs.54 Lakhs for execution and registration of the sale deed. Judgment debtor also enclosed receipt dated

14.8.2014 duly signed by S/shri. Jagannath Prabhakar Gavali and Nitin Madhukar Gavali expressing their willingness to purchase the suit property for market value of Rs.54 Lakhs and that they are ready and willing to bear the expenses in that regard.

6. On 22.8.2014, the decree holder issued notice to S/shri. Jagannath Prabhakar Gavali and Nitin Madhukar Gavali disputing market value of the suit property is Rs.54 Lakhs and contending that receipt dated 14.8.2014 is executed by them is forged and fabricated document.

7. It is the judgment debtor that he attended the office of Tahsildar from 11:00 a.m. to 5:00 p.m. on 26.8.2014 and waited for the decree holder for completing formalities of execution and registration of the sale deed. However, the decree holder did not turn up for registration. On the same day i.e. on 26.8.2014, judgment debtor purchased stamp paper at about 5:00 p.m. and made affidavit recording these facts. Said affidavit was also notarized.

8. On 27.8.2014, the decree holder sent reply to the notice dated 14.8.2014 issued by the judgment debtor disputing the

market value as claimed by the judgment debtor as also disputing the receipt signed by S/shri. Jagannath Prabhakar Gavali and Nitin Madhukar Gavali. On 1.9.2014, judgment debtor issued notice to the decree holder giving one more opportunity by giving four days to the decree holder to comply with the terms and conditions of the decree. Said notice was served on the decree holder on 3.9.2014. The decree holder issued notice on 5.9.2014 *inter alia* setting out therein that it will take some time for arranging Rs.54 Lakhs and such amount cannot be arranged within a short time of four days. He also disputed the market value of Rs.54 Lakhs. It was also set out that the decree holder has filed darkhast proceedings before the Executing Court.

9. Judgment debtor filed application Exhibit-38 on 29.10.2014 for dismissal of the darkhast on the ground that as per the decree passed by the trial Court, the decree holder did not comply with the notices issued by the judgment debtor for exercising peremptory right and, therefore, it is extinguished. The darkhast, therefore, stands satisfied and it may be dismissed. By the order dated 8.11.2014, the learned trial Judge rejected the application. The learned trial Judge directed the

decree holder to deposit Rs.54 Lakhs in the trial Court on or before 29.11.2014.

10. Being aggrieved by the decision dated 8.11.2014, the judgment debtor preferred appeal before the learned District Judge. During pendency of that appeal, S/Shri Jagannath Prabhakar Gavali and Nitin Madhukar Gavali filed application under Order I Rule 10(2) of C.P.C. for impleading them on the ground that they are willing to purchase the suit land for Rs.54 Lakhs being the market value and, therefore, they are necessary parties. The learned district Judge dismissed that application on 29.6.2015. By order dated 27.7.2015, the learned District Judge dismissed the appeal. The judgment debtor has preferred Second Appeal against the decisions dated 8.11.2014 and 27.7.2015 and the same is pending.

11. After dismissal of the appeal by the District Court, judgment debtor filed application Exhibit-55 on 16.9.2015 under Section 47 of C.P.C. for discharging the judgment debtor on the ground that the obligation mandated on the judgment debtor as per clause 3 of the operative part of the trial Court's order was satisfied by them and, therefore, the decree is satisfied. The

judgment debtor may be discharged from this darkhast. The decree holder filed reply Exhibit-67 on 16.9.2015. By the impugned order, the learned trial Judge rejected the application. It is against this order, the judgment debtor has preferred this Petition.

12. Ms. Dhamale reiterated the submissions that were made in the trial Court. She submitted that the decree holder is not ready and willing to comply with clause-3 of the operative part of the order dated 3.3.2014. Decree holder did not pay Rs.54 Lakhs in pursuance of notice dated 14.8.2014 issued by the judgment debtor. The learned trial Judge, therefore, ought to have disposed of the darkhast and also discharged the judgment debtor.

13. On the other hand, Mr. Patil supported the impugned order. He submitted that the contention based on notice dated 14.8.2014 and the receipt dated 14.8.2014 was considered while deciding the application filed by S/Shri. Jagannath Prabhakar Gavali and Nitin Madhukar Gavali filed under Order I Rule 10 of C.P.C. for their impleadment in Regular Civil Appeal No.133/2014. While rejecting the application on 29.6.2015, the

learned District Judge observed that the decree holder has deposited Rs.54 Lakhs on 8.11.2014 in execution petition and complied the order. The learned District Judge thereafter also considered the appeal preferred by the judgment debtor and dismissed the appeal.

14. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The judgment debtor has issued notice on 14.8.2014 calling upon the decree holder to pay Rs.54 Lakhs being the market value. On 27.8.2014, the decree holder gave reply. In paragraph-3, the decree holder asserted that he is ready and willing to purchase the suit property at market value. The Judgment debtor has claimed an exorbitant amount. Judgment debtor filed application Exhibit-38 before the trial Court for discharging him on the ground that the decree holder is not ready and willing to purchase the suit property for Rs.54 Lakhs being the market value. The learned trial Judge rejected that application on 8.11.2014 and directed the decree holder to deposit Rs.54 Lakhs on or before 29.11.2014. Accordingly the decree holder has deposited the amount within the stipulated period.

15. It is material to note that judgment debtor filed application Exhibit-38 which was rejected by the learned trial Judge on 8.11.2014. Against that order, the judgment debtor preferred appeal and that was dismissed on 27.7.2015. Even the application made by the third party pending that appeal was dismissed on 29.6.2015. It is no doubt true that the judgment debtor has preferred Second Appeal and the same is pending. Judgment debtor instead of pursuing said Second Appeal has preferred application Exhibit-55 for the self-same relief which were turned down by the trial Court on 8.11.2014 and by the District Court on 27.7.2015. In view thereof, the application filed by the judgment debtor itself was misconceived and not maintainable. The learned trial Judge referred to the decision in **Savitribai v. Suman, 2009(5) Mh.L.J. 387**. In this decision, it is held that the jurisdiction under Section 47 is limited and narrow. Right to raise objection does not mean that, objector can reopen the matter. The learned trial Judge, also observed that the executing court cannot go beyond the decree. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting the application.

16. Ms. Dhamale sought time on the ground that Second

Appeal preferred by the judgment debtor is pending in this Court and if this Petition is decided, Second Appeal will be rendered infructuous. I do not find any merit in these submissions. This Petition is directed against the order dated 1.10.2015 passed by the learned trial Judge below Exhibit-55. Even independent of the orders passed by the trial Court on 8.11.2014 and 27.7.2015 which are subject matter of Second Appeal, on facts it cannot be said that the decree holder was not ready and willing to purchase suit land in pursuance of clause 3 of the operative part of the order. As noted earlier, the decree holder has already deposited Rs.54 Lakhs in time as order dated 8.11.2014. For all these reasons, the Petition being devoid of any substance is deserves to be dismissed and is accordingly dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)