

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 401 OF 2017
IN
NOTICE NO.932 OF 2017
IN
EXECUTION APPLICATION NO.659 OF 2014
IN
SUIT NO.1425 OF 2002**

Meena Vishnu Bhandari & Ors

..Appellants

Vs.

Sheth Shelters Pvt Ltd. & Ors

..Respondents

Mr. Vijay Gharat i/b Mr. M. V. Holamagi for the Appellants

Mr. Rashid Khan a/w Ms Priyanka Kothari i/b Kinjal Sakhida and Mr. R. S. Khilare for the Respondent No.1

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 10th NOVEMBER, 2017**

P.C.

1 The above Appeal filed by the original Defendants takes exception to the order dated 6-10-2017 by which the notice of execution preferred by the original Plaintiffs /decree holders i.e. the Respondent No.1 herein came to be allowed and the directions which are contained in the operative part of the impugned order came to be issued. The said directions are reproduced herein under for the sake of ready reference :

(a) Notice preferred by the Plaintiff/Decree Holder under Order 21 Rule 34 of the Code of Civil Procedure is allowed.

(b) Registry is directed to appoint an Officer for execution of Conveyance in favour of the Plaintiff according to the Order XXI Rule 34 of the Code of Civil Procedure, 1908 as per the draft Conveyance annexed to the Application on behalf of Defendants in favour of the Plaintiff.

(c) Plaintiff to bear stamp duty and other charges for execution of Conveyance in their favour.

(d) Officer of this Court to remain present before registering authority / Joint Sub-Registrar for execution of Conveyance and for registration.

(e) Execution of Conveyance is expedited.

2 The decrees in question were passed in terms of the consent terms which were filed by the parties on 2-5-2002 and 16-3-2005. It is thereafter that an application for execution came to be filed along with a notice under Order 21 Rule 34 of the Civil Procedure Code. The cause for moving the instant notice was the fact that though the Defendants were called upon to execute a conveyance in terms of the said decrees. The Defendants have refused to do so and therefore the decree holders i.e. the Plaintiffs were left with no alternative but to file an application under Order 21 Rule 34 of the CPC.

3 It is has been recorded in the impugned order by the Learned Single Judge that the Learned Judge who passed the decree in terms of the consent terms had satisfied herself of the fact that the consent terms were

interpreted to the Defendants by the official interpreter. It appears that some of the Defendants had filed an Affidavit in Reply to the Notice of Motion and some other Defendants had filed Notice of Motion (L) No.448 of 2015 questioning the decrees. The Learned Single Judge who recorded the consent terms gave an opportunity to the Defendants to rebut the presumption arising out of the recording of the compromise by a Court. It seems that in notice No.1171 of 2014 the Defendants had raised an objection and made a request to the Learned Single Judge hearing the notice to allow them to file Affidavits to oppose the said notice. The Learned Single Judge had granted an opportunity to the Defendants to file their Affidavit of Evidence, however it was only the Defendant Nos.22 and 23 who filed their Affidavit of Evidence. The said facts have been recorded by the Learned Single Judge in the orders dated 22-7-2015 and 12-8-2015. However, thereafter it seems that Defendant Nos.22 and 23 made a statement before the Learned Single Judge that they do not desire to proceed with their evidence and hence further consent terms dated 18-11-2015 were recorded before another Learned Single Judge R.P. SundurBaldota, J., (as Her Ladyship then was). The said notice No.1171 of 2014 filed by the Plaintiffs / decree holders and the Notice of Motion (L) No.448 of 2015 filed by the Defendants thereafter came up before another Learned Single Judge of this Court (K. R. Shriram J.). In view of the fact that no appearance was put up on the behalf of the Defendants, the Notice of Motion filed by them came to be dismissed whereas, the notice No.1171 of

2014 filed by the decree holders came to be made absolute. The Defendants thereafter it seems filed an Appeal challenging the consent decrees dated 2-5-2002 and 16-3-2005 by preferring an Appeal (L) No.103 of 2017. The said Appeal had come up before a Division Bench of this Court (Shantanu S. Kemkar and M. S. Sonak JJ) on 20-7-2017 on which day, after arguing for sometime, the Learned Counsel for the Appellant withdrew the Appeal to file appropriate application before the Learned Single Judge, that is how it seems that the Appellants have filed Notice of Motion No.1568 of 2017 on 6-9-2017 for setting aside the consent terms and consequently the consent decrees.

4 The Learned Single Judge has in the impugned order referred to the antecedent facts as narrated hereinabove and on the said basis has rejected the contention urged on behalf of the Defendants that a fraud has been practiced on the Defendants as some of the Defendants are illiterate and are not aware of the niceties of law. The Learned Single Judge has recorded in paragraph 17 that the consent terms were duly executed and explained to the Defendants in their own language. That the Learned Single Judge R. S. Dalvi J., (as Her Ladyship then was) called the concerned officer of the Court and recorded his statement. The Learned Single Judge has further recorded that this Court in the orders dated 1-4-2015, 22-7-2015, 12-8-2015, 18-11-2015 and 27-4-2016 has recorded the objections which were urged on behalf of the Defendant to the said consent terms. The Learned Single Judge has further

recorded that though a chance to lead evidence so as to rebut the presumption was granted, it was only the Defendant Nos.22 and 23 who filed their Affidavit of Evidence and that the said Defendants thereafter made a statement that they do not desire to proceed in the matter. It is on the basis of the antecedent as well as the aforesaid facts that the Learned Single Judge did not deem it appropriate to accept the contentions urged on behalf of the Appellants i.e. the Defendants before the Learned Single Judge and accordingly rejected the same.

5 In view of the reluctance of the Defendants to execute the conveyance in favour of the Plaintiffs i.e. the decree holders, the Learned Judge was of the view that the Plaintiffs were right in taking a recourse to Order 21 Rule 34 of the CPC and therefore the directions for execution of the conveyance were required to be issued which have accordingly been issued by the operative part of the impugned order.

6 The Learned Counsel appearing on behalf of the Appellants would contend that since the Notice of Motion being No.1568 of 2017 for setting aside the consent terms is pending, the hearing of the above Appeal be deferred till such time as the said Notice of Motion is decided. The Learned Counsel also sought to reiterate the submissions which were urged before the Learned Single Judge on behalf Defendants by Mr. Holmagi, questioning the

legality of the decree on the ground that a fraud has been practiced on the Defendants.

7 In our view, it is not possible to accede to the request of the Learned Counsel for the Appellants to defer the hearing as sought by him. The decrees which are sought to be executed are consent decrees. The facts as narrated above prima facie indicate that the consent terms were duly arrived at between the parties on the basis of which the consent decrees were passed. The facts on record as indicated above also disclose that though an opportunity was granted by the Learned Single Judge who recorded the consent terms to lead evidence, such an opportunity was not availed of by the Defendants at the relevant time and now mileage is sought to be drawn from the fact that a Notice of Motion has been filed for setting aside the consent terms and consequently the decrees.

8 In so far as the second contention of fraud being practiced on the Defendants which was urged on behalf of the Appellants is concerned, the Learned Single Judge has elaborately dealt with the said contention and rejected the same. We do not find any reason to interfere with the said finding. In our view, therefore, there is no merit in the above Appeal which is accordingly dismissed.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]