

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8055 OF 2016
WITH
CIVIL APPLICATION NO. 928 OF 2018

HARIBHAI HARILAL MAUJIBHAI PATEL
VERSUS
NEELA MADANLAL LODHA AND OTHERS

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Advocate for Petitioner : Shri Deshmukh P.G. h/f Shri Rajput D.K.

Advocate for Respondents 1 & 2 : Shri Kasliwal A.D.
Advocate for Respondent 3 : Shri Warma B.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 02, 2018

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PER COURT :-

1. The Civil Application as well as the Writ Petition was considered for quite some time on 23.1.2018, 1.2.2018 and today as well. Considering the statements made, which I would be reproducing in this order, I am not required to consider the entire submissions of the learned Advocates since it would result into drawing observations.

2. The petitioner has assailed the order dated 1.2.2016 passed by the executing Court below Exhibit 10 in Special Darkhast No.57 of 2014. The matter was circulated on 16.8.2016

and then removed from the Board. It was again circulated on 23.2.2017 and was adjourned at the request of the petitioner. After a few adjournments, the Civil Application was filed by the petitioner seeking a stay to the possession warrant dated 7.11.2017, issued by the executing Court.

3. On 23.1.2018, this Court had passed the following order in the Civil Application:-

"1. Learned Advocate for the applicant submits on instructions from the applicant present in the court that the applicant is willing to show his bonafides by depositing Rs.1,00,000/- before the Executing Court on or before 25.1.2018 and on that condition, the applicant be protected till 1.2.2018.

2. Learned Advocates are agreeable for this arrangement.

3. Stand over to 1.2.2018 in the 'Urgent Orders Category'. The applicant shall deposit Rs.1,00,000/- before the Executing Court on or before 28.1.20-18, failing which, the protection being granted by this order shall stand vacated after court hours of 25.1.2018. On the condition of deposit, the Executing Court would adjourn Spl. Dk. No.57 of 2017 till the next date in this matter."

4. Learned counsel for the Decree Holder submits that this petition is not maintainable in the light of the judgment delivered by the Honourable Apex Court (3 Judges) in the matter of Satyawati Vs. Rajinder Singh and others [2013 ALL SCR 2426], the judgment in Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others [AIR 1991 SC 2251] and the judgment of this Court in the matter of Shripati Ganpati Jadhav Vs. Chandrakant Ganpati Jadhav [2011 (7) All MR 653].

5. Contention is that though the petitioner, who is not a party to the suit and the proceedings emerging therefrom, has preferred his objection in the execution proceedings under Section 47. The said application, in fact, can be treated to have been filed under Order XXI Rule 97 of the CPC, since a person not party to the litigation from the suit till the decision of the High Court, cannot raise objections under Section 47 of the CPC. It is the father of this petitioner, who has legally parted with the suit property in favour of the plaintiff, was a party to the litigation. He is still alive. During his life time, the petitioner, who is his son, claims to be an aggrieved person. Shri Kasliwal, therefore, submits that the only remedy available to the petitioner would be to follow the due procedure of filing an appeal under Order XXI Rule 103 and

also seek condonation of delay in the event of such a delay having been caused.

6. Learned counsel for the petitioner submits, on instructions, that the petitioner is willing to withdraw this petition and prefer an appeal under Order XXI Rule 103 of the CPC by following the due procedure alongwith an application for condonation of delay and the petitioner, who has deposited Rs.1,00,000/- before the executing Court, should be given some protection so as to be able to prefer the appeal. Shri Kasliwal submits that on the condition that the plaintiff will withdraw Rs.1,00,000/-, the litigating sides can appear before the appellate Court on 15.2.2018, when the petitioner will lodge the appeal as well as the application for condonation of delay and serve a copy on the plaintiff or his Advocate present before the Court on the said date. Thereafter, the appellate Court shall first deal with the application for condonation of delay and then with the appeal, if the delay is condoned.

7. Considering the above and the statements recorded and without laying down any precedent, this petition is disposed off as withdrawn by the petitioner with liberty to prefer the

proceedings as recorded in the foregoing paragraphs.

8. The Decree Holder will be at liberty to withdraw an amount of Rs.1,00,000/- deposited by this petitioner from the executing Court without condition as costs for maintaining the status quo from 23.1.2018 till 15.2.2018. The appellate shall formally issue notices which the plaintiff would receive in the presence of the Court and cause an appearance as the plaintiff would be remaining present at 11.00 am on 15.2.2018 and shall thereafter, abide by the dates of hearing in the matter.

9. It is made clear that this Court has not dealt with the merits of the matter and has also not expressed any opinion about any protection to the petitioner / obstructionist after 15.2.2018. The appellate Court shall deal with the said issue on its own merits. It also be noticed that this order is passed by consent of the parties.

10. Since Section 14 of the Limitation Act will have an effect on the request for condonation of delay, the time spent by the petitioner in this Court from 6.6.2016 till the filing of the appeal on 15.2.2018, will be one of the grounds to be dealt with by the

trial Court while considering the application for condonation of delay.

11. Needless to state, since the decree has been sustained upto High Court and dates back to 2004, the appellate Court shall endeavour to dispose off the said proceedings on it's own merits expeditiously, keeping in view the observations in paragraph No.2 of the judgment of the Honourable Apex Court in Satyawati case (supra).

(RAVINDRA V. GHUGE, J.)

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