

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.1114 of 2017**

Mr. Niranjan Ladakchand Jain .. Petitioner

Vs.

Mr. Javeed Shafy Kazi and
Another .. Respondents.

Shri Prasheen Lotlikar, Advocate for the petitioner.

CORAM :- C. V. BHADANG, J.

Date : 12th September, 2018

ORAL ORDER :

On 04/01/2018, this Court had issued notice before admission to the respondents. The respondents, however, failed to remain present, although served. In such circumstances, on 19/04/2018, a notice for final disposal was issued to the respondents and again, the respondents have chosen not to appear, though served. Hence, the petition is taken up for final disposal.

2. I have heard Shri Lotlikar, the learned Counsel for the petitioner. Perused record.

3. The petitioner had filed Special Civil Suit No.7/2013, for specific performance of a contract of sale against the

respondents, seeking following reliefs :

"(a) For judgment, decree and order of this Court directing the defendants to execute the required sale deed and attend the office of Sub-Registrar, Ponda, Goa and admit execution thereof or in the alternative.

(b) To authorize and depute an officer of this Court with powers to represent the defendants to execute the deed of sale and admit the execution thereof before the Sub-Registrar, Ponda, Goa on behalf of the defendants thereby conveying the suit shop to the plaintiff."

4. The respondents failed to contest the suit, which was proceeded ex-parte and eventually partly decreed on 01/04/2014 and consequently, the respondents were directed to execute the sale deed and attend the office of the Sub-Registrar at Ponda and to admit the execution thereof. Indisputably, the sale deed has been executed.

5. The petitioner filed Execution Application No.8/2014 before the learned Senior Civil Judge at Ponda, seeking possession of the suit property. The Executing Court, by an order dated 06/06/2017, has closed the Execution Application as fully satisfied. The Executing Court has come to the conclusion that the suit was only 'partly decreed' directing the defendants to execute the sale

deed and to attend the office of Sub-Registrar at Ponda and to admit execution thereof, which part is fully executed. It is this order passed by the learned Executing Court, which is subject matter of challenge in this petition.

6. Shri Lotlikar, the learned Counsel for the petitioner has placed reliance on the decision of this Court in the case of ***Prataprai Trambaklal Mehta Vs. Jayant Nemchand Shah and other***; AIR 1996 BOMBAY 296 and ***Ramchandra Guja Rewatkar Vs. Mango Vithya Koche and Ors.***; 2015(1) ALL MR 262, in order to submit that it is not necessary for the plaintiff to specifically seek for delivery of the possession of the suit property in a suit for specific performance. It is submitted that the suit was shown to be partly decreed in as much as it has been decreed in terms of the prayer clause (a) alone, when the prayer clause (b) was an alternate prayer.

7. I have considered the circumstances and the submissions made.

8. This Court in the case of ***Prataprai Mehta*** (supra) has held thus in para 12 of the judgment :

“12. In Venkatesh V. Parappa, (1966)1 Mys LJ 799, Mysore High Court sustained the order of delivery of

possession though the decree for specific performance was passed in general terms. All these decisions were referred to and relied on by single Judge of Kerala High Court in Narayana Pillai V. Ponnuswami Chettiar, AIR 1978 Ker 236, where the learned Judge held:

“The executing Court can grant delivery of possession of property even where no such relief is granted by a decree for specific performance of the contract of sale.”

There is a direct decision of this Court in Lotu Bandu V. Pundalik, 1985 Mh. L.J. 359: (AIR 1985 Bom 412) where, Jamdar, J. held that it is not necessary to specifically claim relief of possession in suit for specific performance and the executing Court is competent to grant such relief. The learned Judge observed with reference to Section 22 of the Specific Relief Act that the requirement to claim the relief under Clause (a) or (b) of Section 22 is qualified by the clause “in an appropriate case”. An appropriate case means a case in which the relief does not necessarily flow from the decree for specific performance of the agreement of sale. If such a relief is ancillary to and necessarily flows from a decree for specific performance, then it is not necessary to specifically seek such a relief and the bar of Section 22(2) would not be attracted. The learned Judge further observed that if the defendant is in possession of the property agreed to be sold and the decree directs a specific performance of the agreement of sale, defendant is bound to execute the

sale deed as per the decree and to put plaintiff in possession of the property as contemplated under Sections 50 and 55(1)(f) of the Transfer of Property Act. In view of the decided cases, it is clear that most important part of such a decree is the portion where the Court directs that the contract to be specifically performed and the details which follow do not in any way limit the jurisdiction of the executing Court to take particular steps which are mentioned in the decree, but all other steps which ought to be taken for giving full effect to the decree for specific performance are not only within the competence of the Court, but the Court is bound to assist the party to that effect.”

9. In a recent decision in the case of **Ramchandra Rewatkar** (supra), this Court, placing reliance on the decision in the case of **Prataprai Mehta** (supra), has held that the Execution Application cannot be dismissed on the ground that the decree does not include a direction for delivery of possession. Both these decisions were cited before the Executing Court. However, the Executing Court in para 6 of the impugned order has held that the said decisions would apply only when the suit is wholly decreed, in which case, there would be an implicit direction for delivery of possession of the property sold. In short, according to the Executing Court, the decisions cannot apply, where the suit is partly decreed. The reasoning as articulated by the Executing

Court, in my considered view, cannot be accepted, at least and more so in the facts and circumstances of the present case. This is because the suit was shown to be partly decreed as it was decreed in terms of prayer clause (a), while the prayer clause (b) was an alternate prayer. The fact remains that the Trial Court had directed execution of the sale deed and, therefore, as held by this Court in the decision in the case of **Prataprai Mehta** and **Ramchandra Rawatkar** (supra), the Executing Court could not have closed the execution case as being fully satisfied, as the sale deed is already executed.

10. In such circumstances, the following order is passed :

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside. The Execution Application No.8/2014 is restored back to the file of the Executing Court, for disposal in accordance with law.
- (iii) The petitioner to remain present before the Executing Court on 08/10/2018 at 10.00 a.m.

C. V. BHADANG, J.

SMA