

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 1776 OF 2017
IN
SECOND APPEAL NO. 55 OF 2011**

Shri Makarand Ramchandra Shiralkar ...Applicant

Versus

Sou. Shobha Madhumilind Shiralkar ...Respondent

**WITH
SECOND APPEAL NO. 55 OF 2011
WITH
CIVIL APPLICATION NO. 1107 OF 2015
IN
SECOND APPEAL NO. 55 OF 2011**

Shobha Madhumilind Shiralkar ...Applicant

IN THE MATTER OF

Shobha Madhumilind Shiralkar ...Appellant

Versus

Smt. Shailaja Ramchandra Shiralkar
Deceased through heirs
Sou.Rajashri Hari Shingare & Ors.

...Respondents

**WITH
SECOND APPEAL NO. 97 OF 2011
WITH
CIVIL APPLICATIONNO. 1108 OF 2015
IN
SECOND APPEAL NO.97 OF 2011**

Shobha Madhumilind Shiralkar ...Applicant

IN THE MATTER OF

Smt.Shoba Madhumilind Shiralkar ...Appellant

Versus

Smt. Shailaja Ramchandra Shiralkar
Deceased Makrand Ramchandra
Shiralkar & Ors ...Respondents

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Mr. Chetan G. Patil for the Applicant in Civil Application No. 1776 of 2017 and for Respondent No.2 in Second Appeal Nos. 55 of 2011 and 97 of 2011.

Mr. Akshay A. Deshmukh for the Respondent in Civil Application No. 1776 of 2017 and the Appellant in Second Appeal Nos. 55 of 2011 and 97 of 2011.

Mrs. Shobha M. Shiralkar in person present in Court.

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CORAM: MRS.MRIDULA BHATKAR, J.
DATE : APRIL 16, 2018

P.C.:

1. The learned Counsel for the applicant submits that the applicant has moved Civil Application No. 1776 of 2017 under Order 39 Rule 11 of the Code of Civil Procedure, 1908 and prays

that the Second Appeal No. 55 of 2011 filed by the respondent be dismissed. This Second Appeal is admitted on 10th January, 2012. He further submits that the respondent/original plaintiff had filed Regular Civil Suit No. 170 of 1995 for simplicitor injunction against the applicant/ defendant. The trial Court by judgment and decree dated 29th June, 1999 decreed the suit. Being aggrieved by the said judgment and decree, the applicant had filed Regular Civil Appeal No. 280 of 1999. By judgment and order dated 26th November 2010, the learned Principal District Judge, Kolhapur allowed the Appeal and set aside the judgment and decree passed by the trial Court. Against the order passed by the First Appellate Court, the respondent has filed Second Appeal No. 55 of 2011, which is now appeared and pending before this Court.

2. During the pendency of the Second Appeal No. 55 of 2011, the respondent has filed one Civil Application No. 20 of 2011. By the said Application, the respondent seeks stay to the execution and implementation of the impugned judgment and order dated 26th November, 2010 passed by the First Appellate Court in Regular Civil Appeal No. 280 of 1999. While deciding the Civil

Application No. 20 of 2011, this Court by order dated 17th April, 2012 passed the following order:

“4. Though the relief sought in the above Civil Application is in the nature of seeking stay of the decree passed by the Lower Appellate Court, indeed in view of the fact that the Appeal being allowed and the suit being dismissed, the said relief of stay, in my view, is misconceived. However, what is to be considered is, whether the Applicant/Appellant i.e. the original Plaintiff could be granted an injunction in respect of the house property. In the conspectus of facts as narrated herein above, when there is a contentious issue between the parties as regards the entitlement of the Applicant/ Appellant to lay a claim to the property in question in respect of which an injunction is sought for, and therefore, to see to it that no further complications are created by either of the parties, in my view, it would be just and proper to appoint the Court Receiver in respect of the said house property being “Nishigandha Bungalow”, ETS No.692B4, E Ward, Sahupuri, Second Lane, Kolhapur.

5. The Nazir of the District Court, Kolhapur is therefore appointed as Receiver of the said property with all the powers under Order 40 Rule 1 of the Code of Civil Procedure. The Nazir of the District Court, Kolhapur would take formal possession of the said property on 25th April 2012 on production of this order by the heirs of the Respondent No.1. However, the Applicant/Appellant would continue to remain in physical possession subject to the royalty that would be fixed. The Respondents herein would be entitled to file an appropriate Application for fixing the royalty of the property in question. The said

Application to be filed within a period of two weeks from date. If such an Application is filed, undoubtedly, the Applicant/ Appellant would be entitled to file her reply to the same”.

3. Pursuant to the said order, the Nazir of the District Court, Kolhapur took formal possession of the suit property and the royalty of Rs. 15000/- p.m. has been fixed by the Court Receiver, which was payable from the date of taking formal possession of the suit property i.e., 28th May, 2012. However, till today, the amount of royalty was not paid by the respondent. He further submits that the learned Ad-hoc District Judge, Kolhapur by order dated 8th August, 2012 accepted and confirmed the quantification of the amount of royalty.

4. Initially, in Second Appeal No. 55 of 2011, the respondent had filed Civil Application No. 1105 of 2015 challenging the order dated 8th August, 2012 passed by the learned Ad-hoc District Judge No.1, Kolhapur. In the said matter, by order dated 30th September 2015, this Court gave two weeks' time to make statement within how much time the applicant will deposit royalty fixed by the Nazir of the District Court, Kolhapur pursuant to the order dated 17th April, 2012 and the matter was adjourned.

5. Instead of making statement, on 18th February 2016, the respondent had filed Writ Petition No. 5288 of 2016 before this Court. This Court by order dated 4th May, 2016 dismissed the said Writ Petition and observed as follows :

“11..... As she is in possession of the suit property, she is under obligation to pay the royalty. In any case, after order of the Apex Court dated 17.4.2015, she is liable to pay the royalty. In view thereof, in my opinion, no case is made out for invocation of powers under Article 227 of the Constitution of India and it is a fit case of imposing exemplary costs for suppressing the material fact as also on the ground that the petition is abuse of process of court as also abuse of process of law. Hence, Petition fails and the same is dismissed by imposing costs of Rs. 25,000 to be paid to the 2nd respondent within 4 weeks from today. If costs if not paid, the same shall be recovered as land revenue from the petitioner by the Collector, Kolhapur. In case the petitioner obtains suitable order from the higher Court, she shall forthwith communicate the order to the Collector, Kolhapur”.

6. He has further pointed out that on 18th July 2016, the respondent sought permission of this Court to withdraw the Civil Application No. 1105 of 2015 with liberty to file fresh application. This Court while giving liberty, had passed conditional order that the order dated 30th September, 2015 to continue till the order is passed in the fresh Civil Application otherwise. Thus, the order

dated 30th September, 2015 was revived and the respondent was required to make a statement that how much time she is required to deposit the amount of royalty.

7. Thereafter, the respondent had filed Civil Application (St.) No. 20348 of 2016 seeking direction against the Appellate Court not to proceed for recovery action or attachment of the property and/ or coercive steps of taking possession till the disposal of the Civil Application. The said Application was dismissed with costs of Rs. 25,000/- by order dated 19th September, 2016. Till today, the respondent has not paid money to the applicant. Hence, this Civil Application.

8. The learned counsel for the respondent has submitted that the respondent has no money to pay royalty and, therefore, she is unable to make any statement before this Court.

9. Perused the Civil Application. The previous orders are taken into account. The respondent has taken all possible steps even by suppressing the material facts before this Court to avoid the contempt and also breached the orders passed by this Court.

It appears that the respondent is going on filing different applications and Writ Petition baselessly to avoid compliance of the orders passed by this Court. This is abuse of process of law, which cannot be tolerated. It is a fit case to use the powers for dismissing the Second Appeal for continuously disobeying the orders passed by this Court. Hence, I pass the following order :

ORDER

- (i) Civil Application No. 1776 of 2017 is allowed.
- (ii) The applicant is entitled to recover the royalty amount from the respondent. He may take appropriate legal steps as provided in the law.
- (iii) Second Appeal Nos. 55 of 2011 and 97 of 2011 are hereby dismissed.
- (iv) In view of dismissal of the Second Appeals, Civil Application Nos. 1107 of 2018 and 1108 of 2015 do not survived and hence, disposed of accordingly.

(MRIDULA BHATKAR, J.)