

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2691 OF 2017
IN
WRIT PETITION NO. 1248 OF 2017

Laxman Baburao Mokashi

....Applicant

V/s.

The State Of Maharashtra
and Ors.

.....Respondents

Mr. Chetan G. Patil, Advocate for the applicant.

Mr. S.S. Bhende, Advocate for respondents no.1 to 3.

Mr. Sandip J. Ghogare, Advocate for respondents no.4 and 5.

Coram : K.K. Tated, &**Sandeep K. Shinde, JJ.****Friday 28th September, 2018.****P.C. :**

1. Heard Learned Counsel for the parties.
2. By this Civil Application, the applicant is seeking direction against the respondent-Society either to accept the

amount as per order dated 6th February, 2017 passed by this Court in Writ Petition No. 1248 of 2017 or permit them to deposit in the Registry of this Court.

3. Mr. Patil, the Learned Counsel for the applicant submits that, in the present proceedings, the Learned Divisional Joint Registrar, Kolhapur passed order on 4th May, 2016 in Revision Application No. 7 of 2015 under Section 154 of the Maharashtra Co-operative Societies Act, 1960. The Divisional Joint Registrar rejected Revision Application for non-compliance of Section 154(2A) of the Maharashtra Co-operative Societies Act, 1960. Against the said order, the applicant preferred Writ Petition No. 1248 of 2017 before this Court. After hearing both the sides, this Court permitted the applicant to deposit the statutory amount with the respondent-Society within one week from the date of the order. Para-2 of the said order reads thus :

“2. In view of the aforesaid statement, we dispose

of the petition by granting liberty to the petitioner to deposit the amount within one week from today. On such deposit being made, the said Authority shall restore the Revision and consider the Revision Application as also the prayer of interim relief, on merits as expeditiously as possible.”

4. The Learned Counsel for the applicant submits that, immediately thereafter, they have written letter dated 10th February, 2017 to the Assistant Sub-Registrar, Kolhapur stating that Society is not ready and willing to accept the amount as per order dated 6th February, 2017 passed by High Court. He submits that, applicant also wrote a letter dated 13th February, 2017 to the Joint Registrar, Co-operative Societies, Kolhapur, that the respondent Society is not ready to accept the amount as per order dated 6th February, 2017 passed by this Court. In support of this contention, the Learned Counsel for the applicant relies upon Exhibit-D and Exhibit-E on page-71 and 72 in Contempt Petition (St)-20244 of 2017.

5. The Learned Counsel for the applicant submits

that, thereafter the Joint Registrar, Kolhapur directed the Deputy Registrar, Kolhapur to look into the matter so that the applicant can comply with the order dated 6th February, 2017 passed by this Court. Pursuant to the said letter, the Deputy Registrar submits his remarks to the District Registrar by letter dated 29th March, 2017.

6. The Learned Counsel for the applicant submits that, as the respondent-Society failed and neglected to accept the amount from the applicant, he filed the present Civil Application to enable him to deposit the said amount in the Registry of this court in compliance of order dated 6th February, 2017 so that his Revision Application No. 7 of 2015 can be decided by the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur on its own merits. He further makes a statement that, the applicant is ready and willing to deposit the said amount in the Registry of this Court within one week from today.

7. On the other hand, Mr. Ghogare, Learned Counsel

appearing for respondents no.4 and 5, vehemently opposes the present Civil Application. Respondent no.5 filed their affidavit-in-reply dated 22nd November, 2017. The Advocate for respondents no.4 and 5 submits that the applicant never approached to them for compliance of the order dated 6th February, 2017. He further submits that, they received cheque of Rs.2,80,000/- dated 30th October, 2017 drawn on Dena Bank bearing number 729001 by Registered Post A.D. He submits that, immediately thereafter, they informed to the applicant by their letter dated 3rd November, 2017 that there is no question of accepting the said cheque, because they already sold the property by public auction on 22nd December, 2014. He submits that, they also disclosed to the applicant that, the auction purchaser paid the entire amount of Rs.5,50,000/-. Thus, the property was already transferred in the name of the auction purchaser by registered sale-deed. Not only that, the auction purchaser constructed a building on that property. He submits that, in view of these facts,

there is no question of accepting the amount from the applicant in compliance of the order dated 6th February, 2017 passed by this Court in Writ Petition No. 1248 of 2017.

8. Mr. Ghogare, further submits that, applicants have to take out appropriate proceedings for setting aside the sale-deed. This cannot be allowed in the present proceedings. In support of this contention, he relies upon the Division Bench judgment of the Apex Court in the case of **Chilamkuri Bala Subrahmanyam Vs. Samanthapudi Vijaya Lakshmi and another. reported in (2017) 6 Maharashtra Law Journal page 491.** On the basis of these submissions, the Learned Counsel for respondents no.4 and 5 submits that, there is no substance in the present Civil Application and the same is required to be dismissed with costs.

9. We have heard both sides at length. It is be noted that, the only question that arises is whether the applicant

has shown his willingness to comply with the order dated 6th February, 2017 passed by this Court in Writ Petition No. 1248 of 2017. Bare reading the averments made in the Civil Application and the letters dated 10th February, 2017 (Exhibit-D), 13th February, 2017 (Exhibit-E) and 15th February, 2017 (Exhibit-F) in the Contempt Petition clearly shows that, the applicant tried to deposit the said amount with the respondent-Society immediately but they failed and neglected to accept the same. In view of these facts, we are of the opinion that, the applicant has made out a case for allowing this Civil Application.

10. The authority submitted by the Advocate for respondents no.4 and 5 is not applicable to the facts in the present case. In the present Civil Application, the applicant is seeking direction to respondents no.4 and 5 to accept the amount and/or permit the applicant to deposit the same in the Registry of the Court.

11. During the course of arguments, this Court made

enquiry with the Advocate for respondents no.4 and 5, whether the Society is ready and willing to accept the amount from the applicant as per order dated 6th February, 2017. The Advocate for respondents no.4 and 5, after taking instructions from his client, makes a statement that, they are not ready to accept the amount because they have already sold the property and recovered the entire amount.

12. Hence, the following order is passed :

(I) The applicant is permitted to deposit the amount as per the order dated 6th February, 2017 passed by this Court in Writ Petition No. 1248 of 2017 in the Registry of this Court on /or before 12th October, 2018 failing which Civil Application shall stand dismissed without sending back to the Court.

(ii) If the amount is deposited within the stipulated time as stated hereinabove, the Registry

is directed to invest the said amount in Fixed Deposit in any nationalised Bank initially for a period of one year and the same to be continued till further orders.

(iii) If amount is deposited and receipt to that effect is placed before the Divisional Joint Registrar, Co-operative Societies, Kolhapur in Revision Application No. 7 of 2015, authority to decide the said Revision on its own merits after hearing both the sides.

(iv) Liberty is granted to the parties to approach this court for withdrawal of this amount, as and when, the occasion arises.

(v) The application stands disposed of with no order as to costs.

(SANDEEP K. SHINDE, J)

(K.K. TATED, J)