

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1241 OF 2018

IN

FIRST APPEAL NO. 1389 OF 2003

Mr. Muniraj Rambali Yadav & Ors. ...Applicants
v/s
Mrs. Leenan Anant Tambe and Ors. ...Respondents

Mr. Shyam Kapadia a/w Mr. Amit Kavle for the Applicants.
Ms. Swati Sawant a/w Mr. Avishkar Sawant i/b.
S.K. Legal Associates for orig. appellants in F.A. No. 1389 of 2013.
Mr. Mayur Khandeparkar i/b Mr. S.S. Redekar a/w.
Mr. P.S. Madkaikar for Respondent Nos. 1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 20th MARCH, 2018.

P.C.

. Not on board. Upon mentioning, taken on production board.
With consent of the learned counsels for the respective parties,
matter is heard finally.

2. The applicants herein have sought the following reliefs :-

“ (a) this Hon'ble Court be pleased to pass the necessary order / directions and stay the execution of the Consent Decree dated 31st August 2007, 12th October, 2007 and/or decree dated 10th and 11th February, 2003 passed in Counter Claim No. 11 of 2002 passed by the Bombay City Civil Court.”

“(c) Pending the hearing and final disposal of the present Civil Application, this Hon'ble Court be pleased to grant the temporary stay/injunction and restrain the Respondent Nos. 1 and 2 from disturbing the occupation / possession of the Applicants in their respective room premises on the said property in any manner whatsoever. ”

3. Heard Mr. Shyam Kapadia, learned counsel for the applicants and Mr. Mayur Khandeparkar, learned counsel for respondent nos.1 and 2.

4. The dispute is in respect of tenements/premises in the Chawl known as Budhia Chawl situated at Ram Mandir Road, Goregaon (W), Mumbai. The said tenements shall be hereinafter referred to as the 'suit premises'. The suit premises were subject matter of S.C. Suit No. 5163 of 1999 filed by Shri Budhia Patel and Ors. against the applicants and the respondents. The respondent nos. 1 and 2 had also filed a Counter Claim No. 11 of 2002. By Judgment dated 10-11th February 2003, the City Civil Court at Bombay dismissed the Suit No. 5163 of 1999 filed by Mr. Budhia V. Patel and Others and decreed the said Counter Claim No. 11 of 2002 and directed the original defendants Nos. 1 to 44, which included the applicants herein to deliver vacant possession of their respective premises to respondents nos. 1 and 2 on or before 31st May 2003.

5. The applicants herein had not challenged the judgment and decree. The First Appeal No. 1389 of 2003, filed by the legal

representatives of deceased Budhia against respondents No. 1, 2 and 9 herein, was disposed of by this Court by Judgment dated 13th June, 2006 on the basis of the Consent Terms. Since the applicants had not handed over the possession of the suit premises, the Respondent N0s.1 and 2 have filed Execution Proceedings no.34 of 2012 for possession of suit premises. By this application, the applicants have sought to stay the said execution proceedings.

6. Mr. Shyam Kapadia, learned counsel for the applicants contends that the names of the applicants were deleted from the First Appeal and that consent terms were entered into without their knowledge and consent. It is pertinent to note that the applicants herein, were aware of the consent terms and the order dated 13th June 2006 in First Appeal No. 1389 of 2003. They had taken out a Civil Application No.3628 of 2006 challenging the said consent terms and had sought recall of the order dated 13th June 2007. The said application was dismissed by this Court by order dated 12th October 2007. The SLP No. 211108 of 2007 filed by the Applicants was also dismissed by the Apex Court by order dated 21st April 2010.

7. It is also pertinent to note that on 29th April 2014, the applicants had also taken out Chamber Summons No. 338 of 2017 in Execution Application No. 34 of 2012 alleging that the decree was nullity and not executable against them. The said Chamber Summons came to be dismissed on merits on 15th January 2018. The

respondent Nos. 1 and 2 thereafter sought police protection and by order dated 28th February, 2018 the Trial Court passed the order of execution of decree with the help of police assistance.

8. The applicants herein had filed Writ Petition No. 3397 of 2018 challenging orders dated 15th January 2018 and 28th February 2018. The said Writ Petition was dismissed by this Court on 16th March 2018. The Court had observed that the earlier challenge to the consent order having being dismissed by this Court and the Apex Court, it is too late in the day to contend that the consent decree is a nullity. In Paragraph 9 of the said order, it is also observed that the Petitioners i.e. applicants herein, had made a request that in view of examinations of their children, the earlier statement made by the learned counsel for the respondent/Decree Holder, that the possession warrant would not be executed till 20th March 2018 be extended by another two weeks. The learned counsel for the respondents had agreed to grant time subject to the applicants giving an undertaking that upon expiry of the stipulated period of two weeks, they will handover possession of the suit premises and that they would not create any third party rights. The matter was adjourned to 19th March 2018 for compliance. It is submitted that the Applicants herein have refused to give affidavit cum undertaking to handover possession of the premises.

9. It is pertinent to note that the applicants have suppressed the

fact that the Writ Petition No.3397 of 2018 had been dismissed by order dated 16th March, 2018. It is thus evident that the applicants have not approached this Court with clean hands. Furthermore, the applicants have filed this application in a disposed of appeal with a prayer for simplicitor stay of execution of the consent decree dated 10-11th February, 2003. As stated earlier, the Appeal No.1389 of 2013 was disposed of on the basis of the consent terms. Challenge by the applicants to the Consent Terms and the consent order dated 13th June, 2003 had been dismissed by this Court and by the Apex Court. Similar relief sought in the execution proceedings in Chamber Summons No.338 of 2014 was dismissed by the executing Court and the Writ Petition No.3397 of 2018 against the said order has been dismissed by this Court. Despite previous adjudication, the applicants have once again tried to obstruct execution of decree on the same grounds. This is nothing but sheer abuse of process of law.

10. Under these circumstances, the present application and particularly the prayer in the application is totally misconceived. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)