

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5722 OF 2018

Malad Highway View Cooperative Housing
Society Ltd. ... Petitioner

Vs.

M/s. Agarwal Construction Co. ... Respondent

Mr. Pratibha D. Shelake, Advocate for the petitioner.

Mr. Rahul Vyas, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 20th June, 2018.

P.C.:

Rule. Rule made returnable forthwith. By consent, the Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition filed by invoking writ jurisdiction under Article 227 and 226 of the Constitution of India, taking exception to the order dated 22nd March, 2018 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai, is challenged. The petitioner is the plaintiff, who has filed S.C. Suit No. 4870 of 2002, which was decreed on 25th March, 2009. The suit was filed under (Maharashtra Ownership Flat Act (MOFA)). The said judgment and decree was challenged by the judgment debtor/defendant by filing First Appeal No. 818 of 2009. In the said First Appeal, the Application for stay of the judgment and

decree passed by the trial Court was rejected. The Appeal was only admitted, therefore, the plaintiff/decree holder filed execution proceedings. In this execution proceedings, the trial Court refused to give directions to the judgment debtor for execution of conveyance in favour of the decree holder. Hence, this Petition.

3. The learned counsel for the petitioner has submitted that in the pendency of execution proceedings, the parties mediated over the dispute and have decided to settle it amicably by executing the Deed of Conveyance. The petitioner/decree holder paid stamp duty of the conveyance, however, the judgment debtor refused to execute the conveyance in the office of Registrar.

4. The learned counsel for the respondent/judgment debtor submitted that the judgment debtor refused to execute the Conveyance because the area mentioned in the Deed of Conveyance was more than the area for which the suit was decreed. He further submitted that the promoter did not appear in the office of Sub-Registrar because the decree holder did not invite him.

5. Perused the order of the learned Judge of the City Civil Court.

The order is erroneous and illegal. The learned Judge of the Executing Court ought to have taken into account that in the First Appeal, the High Court did not stay the judgment and order of the trial Court. No stay was granted to the execution. The Appeal was only simplicitor admitted. Under such circumstances, there is no question of judicial propriety and not granting the order of execution in favour of the petitioner/plaintiff. The trial Court has lost complete sight of the object of MOFA and spirit of Section 4 r/w. Section 11 of MOFA. If the judgment debtor does not perform its obligation under the Act, then the decree holder to proceed for execution of conveyance, as directed by the trial Court. The Deed of Conveyance should be as per the decree. The order dated 22nd March, 2018 passed by the learned Judge of the City Civil Court in Execution Application No. 5 of 2015 is hereby set aside. The Deed of Conveyance is to be executed in accordance with law.

6. Writ Petition is allowed.

(MRIDULA BHATKAR, J.)