

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.6113 OF 2018

Girish Motilal Bhuta] Petitioner

Vs.

Tolabai Nagu Namade and others] Respondents

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Mr. Sachin T. Kulkarni, for Petitioner.

Ms. Indrayani M. Koparkar, for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 13TH AUGUST, 2018.

P.C.

Heard Mr. Kulkarni, learned Counsel for the petitioner and Ms. Koparkar, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner hereinafter referred to as “judgment debtor No.2” has challenged the judgment and order dated 21st April, 2018 passed by the learned Judge, Small Causes Court, Pune below Exhibit 174 in Darkhast No.135 of 2014. By that order, the learned trial Judge rejected the application Exhibit 174 made by judgment debtor No.1 under section 47 of the Code of Civil Procedure, 1908 (for short 'C.P.C'.) raising objections to the execution of the decree subject to payment of costs of Rs. 15,000/- to respondents No.1 to 3, hereinafter referred to as “decree holders”.

3. In support of this Petition, Mr. Kulkarni invited my attention to the application dated 22nd November, 2017 filed by judgment debtor No.2 at Exhibit 174 under section 47 of C.P.C raising objection to the execution of the

eviction decree passed in Regular Civil Suit No.524 of 1999. In particular, he submitted that judgment debtor No.2 is pressing grounds No.1 and 3 at page No.3 of that application. In ground No.1, it is contended that in paragraph 1 of the plaint, decree holders have not mentioned measurement or area of the suit premises. Boundaries of the suit premises are not correctly mentioned. Till such time, the plaint is suitably amended, Darkhast proceedings cannot proceed further.

4. In paragraph 3, it is asserted that the decree holders have instituted suit invoking ground of reasonable and bona fide requirement under section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act'). Decree holders contended that decree holder No.2 Prakash was to get married and on that basis, possession of the suit premises was sought. In fact, decree holder No.2 Prakash married to Aruna on 10th October, 1986 and out of this wedlock, two children are also born. As decree holder No.2 Prakash was already married before instituting the suit, the decree holders have obtained decree by suppressing this material fact. It is submitted that in view of section 47 of C.P.C, judgment debtor No.2 is entitled to raise objection even at the stage of execution of the decree. The learned trial Judge was not justified in rejecting the application as also in imposing costs of Rs. 15,000/-.

5. On the other hand, Ms. Koparkar supported the impugned order. She invited my attention to the impugned order and in particular paragraph 12 onwards. She submitted that the suit was decreed by the trial Court on 25th April, 2011. The District Court dismissed Civil Appeal No.368 of 2012 on 12th March, 2013. Aggrieved by these orders, Civil Revision Application No.508 of 2013 was preferred in this Court which was dismissed on 5th September, 2014. Review Petition No.1 of 2015 was preferred against the order dated 5th

September, 2014 which was also dismissed on 18th November, 2016. Married sister of judgment debtor No.2 filed application at Exhibit 75 under Order-XXI, Rule-97 of the C.P.C which was rejected by the trial Court. Civil Appeal No.79 of 2017 preferred against that decision was dismissed on 23rd March, 2017. Writ Petition (ST) No.9650 of 2017 was dismissed by this Court on 18th April, 2017. She submitted that in fact, repeatedly undertaking was given by Judgment debtor No.2 to the Executing Court on 19th April, 2017 and 26th April, 2017 that judgment debtor No.2 will hand over vacant and peaceful possession of the suit premises. Despite that, possession was not handed over to the decree holders. In fact, objections raised in application at Exhibit 174 were raised earlier by filing applications at Exhibit 119 and Exhibit 124 which were dismissed. She, therefore, submitted that no case is made out for interfering with the impugned order.

6. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, judgment debtor No.2 has restricted his challenge in respect of grounds No.1 and 3 of the application at Exhibit 174. In paragraph 1, judgment debtor No.2 has raised objections as regards measurement or area of the suit premises. It is contended that in the plaint, neither area nor measurement of the suit premises are given. The boundaries are also not correctly mentioned. During the course of the hearing, I repeatedly called upon Mr. Kulkarni to satisfy as to whether these objections were raised when the proceedings were pending before the trial Court, District Court or this Court or even in Review Petition. He was not in a position to point out that these objections were raised on earlier occasion.

7. In so far as contention raised in ground No.3 about marriage of decree holder No.2 Prakash is concerned, that objection was also repeatedly

raised by judgment debtor No.2. A perusal of the order dated 23rd June, 2017 below Exhibit 119 shows that judgment debtor No.2 contended that decree holder No.2 had executed release deed in favour of decree holder No.1 and relinquished his right, title and interest. Prayer was, therefore, made that as decree holder No.2 has relinquished his rights, title and interest, execution proceedings deserves to be dismissed. While rejecting application Exhibit 119 on 23rd June, 2017, the learned trial Judge referred to the undertaking given by judgment debtor No.2 on 26th April, 2017 to the effect that he will hand over possession of the suit premises on 12th May, 2017. Judgment debtor No.2 committed breach of the undertaking. In paragraphs 6 and 7, the learned trial Judge noted that even if decree holder No.2 executed release deed in favour of decree holder No.1, decree holder No.1 is already on record and, therefore, execution proceedings cannot be dismissed. In paragraph 8, the learned trial Judge noted that the judgment debtor is interested in prolonging execution of the decree on one or the other pretext. Decree holder No.1 is 87 years old, bed-ridden lady. Considering the conduct of judgment debtor No.2, the learned trial Judge rejected the application with costs of Rs. 10,000/-.

8. Thereafter, application at Exhibit 124 was filed on 13th June 2017 raising objections. It was contended therein that decree holder No.2 had executed release deed in favour of decree holder No.1. It was further contended that decree holder No.2 was married much prior to filing of the suit and the decree was obtained by suppressing material fact on the ground of bona fide requirement of decree holder No.2. The learned trial Judge dealt with these objections and rejected the same on 20th June, 2017, subject to costs of Rs.10,000/-. A perusal of the impugned order shows that the learned trial Judge has referred to the orders passed below Exhibit 119 and 124 and observed that self same objections were raised by judgment debtor No.2 with a view to prolonging execution of the decree and rejected the applications

subject to costs of Rs. 10,000/- and Rs. 15,000/-. It is also material to note that Petition was heard by this Court on 8th June, 2018 and by a detailed order, the petitioner was called upon to make a statement whether he is ready and willing to hand over possession of the suit premises to the decree holders and that he will not seek further extension of time to hand over possession. The petitioner made a statement on 8th June, 2018 that he will hand over possession of the suit premises to the decree holder on 18th June, 2018 by 5.00 p.m and will not seek extension of time for handing over possession. The matter was accordingly adjourned to 20th June, 2018.

9. In the order dated 20th June, 2018, statement of the petitioner that he has handed over possession of the suit premises to the decree holders within the period stipulated in the order dated 8th June, 2018 was recorded. On behalf of the decree holders, Mr. Koparkar confirmed the said fact. Respondent No.3 Shalini Subhash Khatade along with her son Nilesh Khatade was present in the Court. Upon taking instructions from them, Ms. Koparkar stated that decree holders will neither create third party interest nor part with possession. Statement on instructions made by Ms. Koparkar was accepted.

10. Thus, after perusing the impugned order as also the order dated 8th June, 2018, I am more than satisfied that despite suffering eviction decree, judgment debtor No.2 did not hand over possession. Not only that, he has given undertaking. He filed application Exhibit 114 on 19th April, 2017 seeking one month's time for removing articles lying in the suit property and handing over possession to the decree holders. That application was strenuously objected by the decree holders. By order dated 19th April, 2017, the learned trial Judge gave time up to 26th April, 2017 for handing over possession. In that order, the learned trial Judge recorded that the judgment debtor is ready to voluntarily handing over possession on 26th April, 2017. The judgment debtor

again filed application Exhibit 116 seeking 15 days time for shifting furniture and machinery. On 26th April, 2017, the learned trial Judge recorded statement of judgment debtor No.2 that he is ready to give undertaking to the effect that he will hand over possession within 15 days. The learned trial Judge accordingly gave time up to 12th May, 2017 for handing over possession to the decree holders. The judgment debtor accordingly filed undertaking on 26th April, 2017 at Exhibit 117 that he will hand over possession to the decree holders on or before 12th May, 2017. Thus, despite giving undertaking, judgment debtor No.2 repeatedly filed frivolous applications raising similar objections which were overruled. In my opinion, the learned trial Judge was fully justified in dismissing the application. The learned trial Judge has imposed costs of Rs.10,000/- on 23rd June, 2017 while rejecting application Exhibit 119 and further imposed costs of Rs.10,000/- while rejecting application Exhibit 124 on 20th June, 2017. That apart, the learned District Judge while dismissing Civil Appeal No.79 of 2017 on 23rd March, 2017 had imposed costs of Rs. 5,000/-. Having due regard to the fact that in compliance of the order dated 8th June, 2018, judgment debtor No.2 has handed over possession to the decree holders and the Courts below have imposed costs of Rs. 25,000/- in all, I refrain from imposing further costs on him. Subject to above, Petition fails and the same is dismissed.

11. At this stage, Ms. Koparkar submits that costs of Rs. 25,000/- deposited by judgment debtor No.2 may be allowed to be withdrawn by the decree holders. Decree holders are allowed to withdraw the costs deposited by judgment debtor No.2 in the trial Court unconditionally.

[R.G. KETKAR, J.]