

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8420 OF 2016

The Maharashtra Housing and Area Development Authority	..	Petitioner
vs.		
Ashwini Ashok Deolakar & Anr.	..	Respondents

Mr. P. G. Lad for Petitioner.
Mr. H. B. Takke for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 26 MARCH 2018

P.C :

1] Heard Mr. Lad for the petitioner (judgment debtor) and Mr. Takke for the respondent no. 1 (decree holder).

2] The challenge in this petition is to the order dated 6th October 2015, by which the executing court has dismissed the petitioner's chamber summons no. 904 of 2012 seeking for dismissal of the execution proceedings.

3] Mr. Lad, the learned counsel for the judgment debtor submits that the decree dated 16th November 2002 is only a declaratory decree. In terms of such decree, there is no direction to the judgment debtor to place the decree holder in possession of one more room in the new building Samarth Niwas. Mr. Lad submits that an executing court, cannot travel beyond the decree. He therefore submits that the execution application, which seeks possession of one more room, was not at all maintainable and the executing court, exceeded jurisdiction in dismissing the chamber summons no. 904

of 2012, which, chamber summons, was seeking dismissal of the execution application.

4] In the alternate, Mr. Lad submits that in terms of the rules of the MHADA, the decree holder is required to pay an additional amount of approximately Rs.4 lakhs in case the decree holder, has to be placed in possession of one more room. He submits that MHADA has already made an application (Exhibit 2) before the executing court for determination of this issue, which according to him, is an issue which is required to be determined under section 47 of the CPC. Mr. Lad submits that till date, this application has not been decided. Without prejudice to his earlier submission, Mr. Lad submits that suitable directions be issued to the executing court to decide and dispose of in accordance with law the application at Exhibit 2.

5] Mr. Takke, the learned counsel for the decree holder submits that from the perusal of the judgment and decree, it is very clear that the judgment debtor is required to place the decree holder in possession of one more room in the new building Samarth Niwas. He submits that there is even a decree of permanent injunction which is granted restraining the judgment debtors from parting with possession or transferring one room to any other person since, the same is to be allotted to the decree holder in lieu of room no. 7 in the old building, Deolekar Sadan. He therefore submits that the chamber summons no. 904 of 2012 was entirely misconceived and the same was rightly dismissed by the executing court. On the aspect of application at Exhibit 2, Mr. Takke submits that the petitioner has been applying for adjournments before the executing court on the ground of pendency of the present petition.

6] Rival contentions now fall for determination.

7] The decree dated 16th November 2002 of which, the execution is pending, reads as follows :

“ORDER

1. *The suit is partly decreed with costs.*

2. *It is declared that the Plaintiff has right and interest and entitled for one more room in the new building Samarth Niwas, constructed by the defendant no. 1 in lieu of Room No. 7 in the old building, Deolekar Sadan.*

3. *The Defendant Nos. 1 & 2 their officers and servants are permanently restrained by order of injunction, from parting with possession by way of transferring or alienating one room in the new building constructed by the Defendant No. 1 to any other person, which shall be allotted to the Plaintiff in lieu of room no. 7 of the old building Deolekar Sadan, except the plaintiff.*

4. *Decree be drawn accordingly. Mr. Aiman Adv. for the Deft. MHADA submitted that he wants to prefer appeal and requested for stay of Judgment and Order. Request granted. The operation of the Judgment and Order is stayed for three weeks.”*

8] The executing court, has quite correctly held that the declaration of entitlement in the facts and circumstances of the present case, includes the direction for placement of the decree holder in possession of one more room in new building Samarth Niwas constructed by the MHADA, in lieu of room no. 7 in the old building, Deolekar Sadan. As if, this were not sufficient, reference can be usefully made to clause no. 3 of the aforesaid decree, which clarifies the matter further.

9] Clause no. 3 of the decree under execution restrains the MHADA from parting with possession by way of transferring or alienating one room to any other person '*except the plaintiff*'.

Further, clause no. 3, in terms, states that one more room shall be allotted to the plaintiff in lieu of room no. 7 of the old building Deolekar Sadan. From this, it is clear that the decree, in terms, directs allotment and consequently, placement of the decree holder in possession of one more room. Thus construed, there is neither any jurisdictional error nor any infirmity in the order impugned in this petition. There is accordingly no case made out to interfere with the impugned order.

10] Mr. Lad, the learned counsel for the judgment debtor is however right that the petitioner's application at Exhibit 2 is also required to be decided one way or the other by the executing court. The executing court, is therefore, directed to decide the MHADA's application at Exhibit 2 one way or the other, in accordance with law and on its own merits as expeditiously as possible and in any case within a period of eight weeks from today. This is necessary because execution proceedings, have to be attended to and disposed of expeditiously in terms of the various rulings of the Hon'ble Supreme Court.

11] It is further clarified that the issue of placement of the decree holder in possession of one more room and the issue of requirement to pay an amount of Rs.4 lakhs, need not be regarded as connected. Even after the decree holder placed in possession of the additional room, if, the executing court, comes to the conclusion that the decree holder is required to pay to MHADA an amount of Rs.4 lakhs as claimed, the executing court, can always, direct such payment and recover such amount from the decree holder. This is because, the decree which is sought to be executed, contemplates the decree holder be placed in possession of one more room and there is no case made out to postpone such

placement, until the issue of payment is determined.

12] In **Satyawati vs. Rajinder Singh & Anr.**¹, the Hon'ble Supreme Court recalled the observations of the Privy Council in **General Manager of the Raj Durbhunga vs. Coomar Ramaput Sing**² that '*.....the difficulties of a litigant in India begin when he has obtained a decree*'. In this case, the Hon'ble Supreme Court deprecated the delay in execution of a decree made in the year 1996 and went on to refer to the judgment of the **Privy Council in Kuer Jang Bahadur vs. Bank of Upper India Ltd.**³ that Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment -debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights. The Supreme court noted that inspite of such observations in 1925, the Supreme Court, in **Babu Lal vs. Hazari Lal Kishori Lal**⁴ was constrained to observe that procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in thwart the execution by all possible objections.

13] In *Satyawati* (supra), the Hon'ble Supreme Court made reference to **Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd.**⁵, in which the Hon'ble Supreme Court had noted that execution proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the

1 (2013) 9 SCC 491

2 (1871-72) 14 MIA 605: 20 ER 912

3 AIR 1925 Oudh 448 (PC)

4 (1982) 1 SCC 525

5 (1999) 2 SCC 325

unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time.

14] The Hon'ble Supreme Court also made reference to tis decision in ***Shub Karan Bubna vs. Sita Saran Bubna***⁶, again recalling proverbial observation by the Privy Council that the difficulties of a litigant begin when he obtains a decree and therefore it is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant. The Hon'ble Supreme Court concluded by stating that it strongly feels that there should be no unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

15] This petition is disposed of in the aforesaid terms. There shall be no order as to costs.

16] All concerned to act on basis of authenticated copy of this order.