

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8544 OF 2017

Shantilal Ratanshi Chheda,]
Age : 64 years, Occ. Business,]
R/at Flat No.24, 4th Floor,]
Satnam Co-op. Housing Society,]
Peddar Road, Mumbai – 400026.] Petitioner

Versus

1. Ratanshi Shamji Oil Company,]
A duly registered Partnership Firm,]
under the provisions of Partnership]
Act, 1932, having its office at 221,]
Market Yard, Pune – 400 037.]
2. Haridas Purushottam Gujrati,]
Partner of M/s. Haridas and Company,]
Age : 62 years, Occ. Business,]
Having address at Parasnis Colony,]
Market Yard, Gultekadi Road,]
Pune – 411 037.]
3. Ashok Ratanshi Chheda,]
Age : 59 years, Occ. Business,]
R/at Flat No.44, Jai Yashwant]
Andheri Co-op. Society Ltd.,]
S.V. Road, Andheri (West),]
Mumbai – 400 058.] Respondents

Mr. Rakesh Agrawal, a/w. Mr. Chetan R. Shah, for the Petitioner.

Mr. J. Shekhara, a/w. Mr. Akshay R. Kalodia, i/by M/s. J. Shekhar & Co.,
for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30TH JANUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Agrawal, learned counsel for the Petitioner, and Mr. Shekhara, learned counsel for the Respondents.
2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 7th June 2017 passed by District Judge-12, Pune, below "Exhibit-1" in Darkhast No.1701 of 2014.
3. The said Darkhast has been filed for execution of the Award passed by the learned Arbitrator on 25th July 2014, based on the 'Consent Terms' executed by and between the parties on 22nd June 2014.
4. As per the terms mentioned in paragraph No.6 of the 'Consent Terms', it was agreed between the parties that the Claimant or Respondent No.3 or both of them, either themselves or through the hands of their nominated person, or, if they intend to sell the shop premises through the hands of the said purchaser for Rs.85,00,000/- to Respondent No.2 on or before 31st August 2014, then, as per Clause 6(A), the amount of Rs.10,00,000/- was to be paid on or before 31st July

2014. It is not disputed between the parties that the said amount is paid within the stipulated time. Clause No.6(B) of the 'Consent Terms' further provides as follows :-

“6(B). Balance Rs.75,00,000/- (Rs. Seventy Five Lakhs only) on or before 31st August 2014, simultaneously Respondent No.2 vacating and handing over the vacant and peaceful possession of the said shop to the Claimant or Respondent No.3 or both of them or to the person nominated by them or to the buyer of the said shop decided by Respondent No.3 and Claimant jointly or individually and upon Respondent No.2 executing all the documents, Undertaking, Covenants, Deeds etc. in favour of the Claimant or Respondent No.3 or both or person/s nominated by them including buyer of the said shop decided by Claimant or Respondent No.3 or both of them.”

5. Thus, the dispute pertains to the payment of this remaining amount of Rs.75,00,000/-, which, according to the Respondents, is not paid within the stipulated period of '*on or before 31st August 2014*'.

6. In this respect, Clause No.9 of the 'Consent Terms' is also relevant, which reads as follows :-

“9. AGREED AND CONFIRM THAT in the event the Claimant failed to make payment of the consideration amount, as agreed above, either through himself or through Respondent No.3 or through the person/s nominated by

them, then Respondent No.2 shall be entitled to interest on the balance amount of consideration at the rate of 12% p.a.”

7. Relying on this Clause No.9, the Executing Court has directed the present Petitioner to deposit in the Court the amount of Rs.75,00,000/- as remaining amount of consideration, along with the interest @ 12% p.a. from 31st August 2014 till the date of actual depositing of the said amount.

8. The real grievance of learned counsel for the Petitioner and in my considered opinion is rightly so, is about the Executing Court directing to deposit the amount of Rs.75,00,000/-, along with the interest @ 12% p.a., in pursuance of Clause No.9 of the 'Consent Terms'. Clause No.6(B) of the 'Consent Terms' clearly provides performance of reciprocal promises. According to it, just as there was liability on the Petitioner to pay the amount of Rs.75,00,000/- on or before 31st August 2014, simultaneously, the liability was cast on Respondent No.2 of vacating and handing over the vacant and peaceful possession of the shop premises to the Claimant or to Respondent No.3 or both of them or to the person nominated by them or to the buyer of the shop premises, by executing all the necessary documents, which are meant for transfer of the title.

9. The submission of learned counsel for the Petitioner is that, the shop premises were standing in the name of *'Ratanshi Shamji Oil Company'*, a duly registered Partnership Firm, and as per paragraph No.2 of the 'Consent Terms', it was stated to be the asset of Respondent No.1-Firm i.e. *Ratanshi Shamji Oil Company*. However, the Petitioner has come across the document to show that, now the said shop is standing in the name of *'Ratanshi Shamji Brothers'*. Even in the 'Caveat' filed by *'Krishiutpanna Bajar Samiti, Pune'*, the said shop premises are shown in the name of *'Ratanshi Shamji Brothers'*. Therefore, there is definitely a bonafide doubt in the mind of the Petitioner about the title of the said shop. In view of the 'Consent Terms', it was the responsibility of Respondent No.2 to give a clear title, along with the vacant and peaceful possession of the said shop, to the Petitioner, simultaneously, with payment of the amount of Rs.75,00,000/- by the Petitioner to Respondent No.2.

10. In view thereof, the Trial Court, in paragraph No.7 of its order, has also observed that, *"both the parties are showing willingness to perform their part of the 'Consent Terms'"*, thereby clearly implying that the Petitioner was also ready to perform his part of the 'Consent Terms'.

11. Even in paragraph No.5 of the impugned order, the Executing Court has observed that, *"from the above-mentioned Clauses of the*

'Consent Terms', it appears that there are reciprocal promises made by the parties towards each other and they are required to perform their part as per the chronological sequence of the transaction between the parties”.

12. Now, as regards the issue of payment of Rs.75,00,000/- from the Petitioner to Respondent No.2, there is no chronological sequence of Petitioner paying the amount first and then Respondent handing over the vacant possession with clear title. The word 'simultaneously' used in paragraph No.6(B) of the 'Consent Terms' is relevant in this respect. As per paragraph No.6(B) of the 'Consent Terms', 'simultaneously', with the payment of this amount of Rs.75,00,000/- on or before 31st August 2014 by the Petitioner, Respondent No.2 was also saddled with an obligation to vacate and handover the vacant and peaceful possession of the said shop by executing all the documents, thereby indicating that, Respondent No.2 has to satisfy the Petitioner about the title of the said shop also. If there is genuine doubt created in the mind of the Petitioner about the title of the said shop, considering the documents, which are produced in the case, then, it cannot be said that Respondent No.2 was ready to perform his part of the 'Consent Terms', however, Petitioner has avoided to do so and, therefore, the Petitioner should be saddled with the payment of interest in terms of Clause No.9 of the 'Consent Terms'. That liability would have arisen, if there was no simultaneous duty or

obligation cast on Respondent No.2 of vacating the shop premises and handing over clear title of the shop premises to the Petitioner.

13. The bare perusal of Clause No.6(B) of the 'Consent Terms' makes it clear that, the obligations cast on the Petitioner and Respondent No.2 were to be performed simultaneously and there was no question of the Petitioner first depositing the amount and then Respondent No.2 handing over vacant and peaceful possession of the shop premises with clear title. In such situation, the Executing Court has committed an error in casting the liability of payment of interest @ 12% p.a. on the Petitioner on the amount of Rs.75,00,000/- from 31st August 2014 till the date of actual depositing of the said amount. The said part of the impugned order passed by the Trial Court, therefore, needs to be quashed and set aside to that extent. Ordered accordingly.

14. Writ Petition is, accordingly, allowed.

15. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]