

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10310 OF 2018

Ramesh Dudani	...	Petitioner
Vs.		
Madhavi Ramesh Dudani	...	Respondent

Mr. Vikram V. Pai for Petitioner.
Mr. Amit Kumar Bhowmik for Respondent.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 30, 2018

P.C. :

Heard Mr. Pai, learned Counsel for the petitioner and Mr. Bhowmik, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'judgment-debtor' has challenged the order dated 16.07.2018 passed by the learned Judge, Family Court No.2, Mumbai in Regular Darkhast No.518 of 2017. In that order, the learned trial Judge recorded that if the first floor of Bungalow at 2-B, Indu Park Co-operative Housing Society, Four Bungalows, Andheri (West), Mumbai (for short 'suit premises') is sold, the judgment debtor can raise enough money to provide flat admeasuring 600 sq.ft. carpet area in Andheri (West) or Juhu Vile Parle area and take away the surplus. The learned trial Judge also noted the submission advanced on behalf of the judgment debtor that daughter from the first marriage of the judgment debtor is occupying the suit premises. The learned trial Judge overruled that contention by observing that judgment-debtor has no locus standi on her behalf and he cannot raise that objection.

3. Respondent, hereinafter referred to as 'decree-holder', had first instituted Family Court Appeal No.121 of 2004 in this Court challenging

the common judgment and order dated 29.06.2004 passed by the learned Judge of the Family Court, Mumbai. Decree-holder had instituted Petition No.A-1822 of 1992 on 23.11.1992 in the Family Court seeking judicial separation under Section 10 of the Hindu Marriage Act, 1955 (for short 'Act') on the ground of cruelty and ill-treatment. The judgment-debtor had instituted matrimonial Suit No.B-96 of 1992 on 23.12.1992 seeking declaration that the purported marriage between the parties performed on 19.01.1983 be declared null and void on the ground that decree-holder was not a Hindu prior to her marriage and that she had not been converted to Hinduism any time prior to the marriage. The learned trial Judge accepted the submission of the judgment debtor that decree-holder had not been converted to Hinduism prior to marriage, and therefore, marriage between them cannot be said to be valid marriage as per Section 5 of the Act. The learned trial Judge, therefore, held that Family Court has no jurisdiction to entertain and try the Petition filed by the decree-holder for judicial separation or the petition instituted by the judgment-debtor seeking a declaration of nullity of marriage. The learned trial Judge dismissed both the petitions on the ground that Family Court had no jurisdiction to entertain and try the petitions filed by the parties.

4. The Division Bench of this Court (Coram : H. L. Gokhale, J., as His Lordship then was and Mrs. R. S. Dalvi, J.) decided the Family Court Appeal on 25.11.2005. In paragraph 2, the Division Bench noted that the petitioner herein is an industrialist and a businessman of some standing. He is stated to be an engineer and used to run a company by name 'Technical Products Corporation', which manufactured small engineering equipments such as screws, nuts and bolts. He had a factory in MIDC, Andheri, Mumbai. He had divorced his earlier wife Sugandha Rani some time in the year 1982. He had two children: one son and one daughter from his earlier marriage. Respondent was Catholic Christian

by birth and her name was Magdhelene Pereira. Two daughters were born from this marriage. The elder one by name Ritu was born on 10.12.1983 and the younger one by name Richa was born on 03.08.1986. The parties lived together in the suit premises. From paragraph 24 onwards, the Division Bench considered prayers regarding maintenance for the respondent and the two daughters and house accommodation. Reference was made to MoU of 1991 whereunder petitioner has agreed to provide an appropriate apartment to the respondent. The Division Bench noted that the parties lived together for over 8 years. Respondent lived with the petitioner as a wife of a wealthy industrialist. In paragraph 25, the Division Bench noted that petitioner had closed his business in Mumbai subsequent to their separation and shifted to Mohali in Chandigarh. It was accepted position that when petitioner disposed of his factory in M.I.D.C., Mumbai some time in 1994-95, capital gain was about Rs.1.69 crore. The suit premises is a two-storey apartment. The Division Bench recorded that respondent is keen on going to the suit premises on being given at least one floor thereof. This Court did not think it desirable that parties should continue to live under the same roof. The Division Bench observed that respondent will have to be provided with appropriate residence befitting her status as the ex-wife of a wealthy industrialist. That cannot be wished away.

5. In paragraph 30, the Division Bench directed the petitioner to invest amount of Rs.10,00,000/- in the name of each of the daughters, considering the cost of living and their status as daughters of an industrialist. The Division Bench reiterated that petitioner is an industrialist and quite well off. He had divorced his first wife. His daughter from earlier marriage is already married and son is an adult and is in business. He does not have any major liability. In paragraph 31, it

was observed thus,

“At the end of 3 months, i.e. by end of February 2006, if this investment of Rs.10,00,000/- in the name of each of the daughters is not made or if the flat is not made available or Rs.30,00,000/- are not deposited, it will be open to the appellant (respondent herein) to execute this decree for Rs.50,00,000/- by attaching and selling the Indu Park Apartment. It will be open to her, if she so intends, to get possession of the first floor of that apartment in lieu of the flat contemplated under this order.”

6. The Division Bench set aside the finding and the consequential impugned order passed by the Family Court dismissing both the petitions on the ground that it had no jurisdiction to entertain and try the Suit. The Division Bench declared that Family Court does have jurisdiction to entertain and try both the petitions. Petition No.B-96 of 1992 instituted by the judgment-debtor for declaration of nullity of marriage was dismissed. Petition No.A-1822 of 1992 instituted by the decree-holder was disposed of. Instead of granting relief of judicial separation, relief of divorce sought by the judgment debtor in cross-petition was granted and the marriage between the parties was dissolved by the decree of divorce. In so far as the controversy raised in the present Petition is concerned, this Court directed the judgment-debtor to buy a self-contained flat consisting of a sitting room, bedroom and kitchen of atleast 600 sq.ft. carpet area in Andheri (West) or Juhu-Vile Parle area in a good housing society in the name of the decree-holder and her two daughters by the end of February 2006. In the event of failure on the part of the judgment-debtor in securing flat, he was directed to deposit an amount of Rs.30,00,000/- in this Court by the end of February 2006. Upon decree-holder entering into such agreement for purchasing a flat, the amount was ordered to be paid over to the vendor. The judgment debtor was restrained from selling, alienating on in any way parting with or encumbering the suit premises. It was also observed that in the event of the judgment debtor failing to buy a house or to

deposit Rs.30,00,000/- and to invest the amount of Rs.10,00,000/- each in the name of two daughters by the end of February 2006 as directed, it will be open to the decree-holder to execute the decree for Rs.50,00,000/- by attaching and selling the suit premises. In that, it will be open to the decree-holder to get the possession of the first floor of the suit premises in lieu of the flat contemplated under that order.

7. Aggrieved by this decision, judgment debtor preferred S.L.P. (Civil) No.26614-26616 of 2005 before the Apex Court. By order dated 06.01.2006, the Apex Court issued notice and until further orders, operation of the High Court's order was stayed. On 07.07.2006, the Apex Court granted leave and continued interim order dated 06.01.2006 subject to the petitioner paying a sum of Rs.8,000/- every month for education of the daughters by depositing the amount in the bank account of the daughters. By order dated 27.11.2012, without prejudice to the stand of the parties, the Apex Court directed the petitioner to pay a sum of Rs.10,00,000/- directly to the respondent by way of Demand Draft / Bank transfer, within a period of two weeks. It is not in dispute and is rather a matter of record that on 07.04.2014, the Apex Court vacated the stay on the ground that judgment-debtor has been enjoying the order of stay in his favour since 2006. He has not paid any amount to the decree-holder as per the decree nor a flat has been provided. The Apex Court therefore, deemed it appropriate to vacate the order of stay in favour of the judgment-debtor and decree-holder was given liberty to execute the decree and order dated 25.11.2005. The judgment debtor was directed to provide to decree-holder with the flat as directed by the High Court in the impugned order. It was further clarified that in the event of failure to provide the flat, decree-holder will be entitled to take possession of the flat from the judgment-debtor. The matter was kept on 21.04.2014 for reporting compliance. It appears that on 12.11.2014, judgment-debtor had withdrawn Civil Appeal No.2886 of 2016 filed against the order of

the High Court, dated 25.11.2005. On 05.12.2014, the judgment debtor deposited Rs.30,00,000/- in this Court. Decree-holder had filed Darkhast for execution of the decree passed by this Court before the Family Court some time in the year 2017. In the Darkhast proceedings, decree-holder pressed prayer clause (a) by which direction was sought against the judgment debtor to handover possession of the suit premises as per the High Court's order. She clarified that she does not want to press for any other prayers. By the impugned order, the learned trial Judge has issued directions, as indicated above. It is against this order, decree-holder has instituted the present Petition.

8. In support of this Petition, Mr. Pai strenuously contended that the Darkhast filed by the decree-holder in the year 2017 is hopelessly barred by limitation. The High Court has decided the case on 25.11.2005 and as Darkhast is filed in 2017 for execution of that decree, it is barred by limitation. In fact, no decree is drawn in pursuance of the High Court's order dated 25.11.2005. He further submitted that by passing the impugned order, in substance, the Executing Court has gone behind the decree, which is impermissible. He relied upon the decision of ***Topanmal Vs. M/s. Kundomal Gangaram***, AIR 1960 SC 388 in support of this proposition. Mr. Pai submitted that in any case the decree is satisfied by the judgment debtor by depositing Rs.30,00,000/- in this Court. He submitted that after the judgment was delivered by this Court on 25.11.2005, S.L.P. was preferred by the judgment debtor challenging decision of this Court and the decision of this Court was stayed by the Apex Court on 06.01.2006. As the decision was stayed, the judgment-debtor could not deposit Rs.30,00,000/- by the end of February 2006. Immediately after the stay was vacated and the appeal was withdrawn, judgment debtor has deposited Rs.30,00,000/- in this Court on 05.12.2014 and

thus has satisfied the decree passed by this Court.

9. He further submitted that the decree holder has pressed prayer clause (a) of Darkhast namely for issuing direction to the judgment debtor to handover possession of suit premises. He submitted that the suit premises is in the joint name of the judgment debtor and his first wife Sugandha. His first wife Sugandha is staying along with her daughter and grand child. He invited my attention to Criminal Case No.342/P/2002 arising from C.R.No.501/201 registered at D.N.Nagar Police Station for offences punishable under Sections 454, 457, 480, 341, 506 read with Section 114 Indian Penal Code, 1860 (for short 'I.P.C.'). He submitted that the decree-holder had challenged the order dated 17.11.2006 passed by the Special Metropolitan Magistrate framing and recording charges under Sections 341, 457 and 506(II) r/w. 34 I.P.C. for the incidents that took place between 03.11.2001 and 05.11.2001. By order dated 28.09.2011, the learned Additional Sessions Judge, Greater Mumbai dismissed the Revision Application filed by the decree-holder. Aggrieved by that decision, she instituted Writ Petition No.909 of 2012, which was eventually withdrawn.

10. Mr. Pai submitted that prayer (a) sought by the decree-holder cannot be granted as it is not feasible having regard to the criminal case pending against the decree-holder. He submitted that the suit premises (Indu Bungalow) are also not partitioned and if decree-holder is permitted to occupy the suit premises, it will lead to untoward incident. He submitted that in pursuance of order dated 28.09.2018, judgment debtor has suggested premises as directed by this Court in its order dated 25.11.2005. He is ready and willing to offer those premises to the decree-holder, which will satisfy the

decree passed in favour of the decree-holder. He, therefore, submitted that the Petition requires consideration.

11. On the other hand, Mr. Bhowmik invited my attention to affidavit dated 25.10.2018 made by the decree-holder. Along with the affidavit, decree holder has suggested flat in Divyam Heights, behind Bhavan's College, Andheri (W). He further submitted that the premises suggested by the judgment-debtor were already turned down on the previous occasion. He submitted that in fact in the year 1991, MoU was entered into between the parties whereunder the judgment debtor has agreed to make separate arrangement of the decree-holder. It was further agreed between the parties that in case the arrangement recorded in the MoU is not made available within 20 days i.e. on or before 26.03.1991, then in that event, decree-holder will have right to enter the present residence on 27.03.1991 without any obstruction or restraint from the judgment-debtor. From 1991 onwards till date, the judgment debtor has not made any arrangement for accommodation of the decree-holder. He further submitted that as the judgment-debtor, after obtaining the stay in the year 2006, neither deposited Rs.30,00,000/- nor made available accommodation, the Apex Court vacated the interim order on 07.04.2014. He further submitted that on 12.11.2014, judgment-debtor withdrew the appeal. After withdrawal of the appeal, the judgment-debtor is bound by the order passed by this Court on 25.11.2005 and in pursuance thereof, decree-holder has filed Darkhast for execution of the decree passed in the Family Court Appeal. He submitted that deposit of Rs.30,00,000/- in this Court on 05.12.2014 has been considered by the learned trial Judge while passing the impugned order. For the reasons recorded in paragraph 6, he submitted that no fault can be found with the approach of the trial Court. If the judgment-debtor were to deposit Rs.30,00,000/- by end of February 2006 then alone, it can be treated as

satisfaction of the part of the decree. Having not deposited the amount of Rs.30,00,000/- by the end of February 2006 and deposited the amount in this Court on 05.12.2014 i.e. only after vacation of the stay and withdrawing the Appeal in the Apex Court, cannot be said to be satisfaction of the decree.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The matter was heard at length on 27.09.2018 and was adjourned to 28.09.2018 so as to enable Mr. Pai to take instructions from the judgment debtor. The matter was heard at length again on 28.09.2018. In the order dated 28.09.2018, clauses (e) and (h) of paragraph 35 of order dated 25.11.2005 were reproduced. Upon taking instructions from the judgment-debtor, Mr. Pai stated that petitioner is ready and willing to offer the flat admeasuring 600 sq.ft. carpet areas in Andheri (W) or Juhu-Vile Parle in a good housing society in the name of the decree-holder and her daughters. He sought 3 weeks time for identifying the flat. Further statement was made to the effect that in case the judgment-debtor is unable to offer premises in terms of clause (e) of this Court's order dated 25.11.2005, he will deposit the market value of the flat admeasuring 600 sq.ft. carpet area in Andheri (W) or Juhu- Vile Parle in this Court within 3 weeks. Statements made on instructions, were accepted. Mr. Bhowmik also made statement that decree-holder would try to locate flat in terms of clause (e) of the order dated 25.11.2005. In view thereof, hearing of this Petition was deferred till today. It was made clear if by that time, the judgment-debtor was not in a position to secure a flat in terms of clause (e) of the order dated 25.11.2005, the Court will consider directing the petitioner to deposit market value of flat admeasuring 600 sq.ft. carpet area in Andheri (W) or Juhu-Vile Parle or in the alternate, in terms of clause (h), consider putting the decree-holder

in possession of the first floor of the suit premises.

13. Mr. Pai submitted that judgment debtor is ready and willing to deposit market value of flat admeasuring 600 sq.ft. carpet area situate either in Andheri (West) or Juhu-Vile Parle. It is not possible to accept this submission. While passing the order on 28.09.2018 itself, the submission of the judgment debtor that in case he is unable to offer premises in terms of clause (e) of this Court's order dated 25.11.2005, he will deposit the market value of the flat admeasuring 600 sq.ft. carpet area in Andheri (W) or Juhu- Vile Parle in this Court within 3 weeks was recorded. It is, therefore, not possible to give further time for depositing market value of the flat.

14. Coming to the submissions advanced by Mr. Pai that Darkhast filed by the decree-holder in the year 2017 is hopelessly time barred, I do not find any merit in this submission. As mentioned earlier, this Court decided the Family Court Appeal on 25.11.2005 against which the judgment debtor preferred S.L.Ps. before the Apex Court. On 06.01.2006, Apex Court stayed order passed by this Court. Interim stay was vacated on 07.04.2014 and the appeal was withdrawn on 12.11.2014. Till such time, the stay granted by the Apex Court was operating as also appeal was pending before the Apex Court, decree holder could not have filed Darkhast proceedings. As mentioned earlier, the appeal was eventually withdrawn on 12.11.2014 and Darkhast is filed in the year 2017. Article 136 of the Limitation Act, 1963 lays down that for the execution of any decree (other than a decree granting a mandatory injunction) or order of any Civil Court, period of limitation prescribed is 12 years when the decree or order becomes enforceable. The decree became enforceable after vacating

stay on 07.04.2014. In view thereof, it cannot be said that the Darkhast filed by the decree-holder is barred by limitation.

15. Mr. Pai relied upon the decision in **Topanmal's case** (*supra*) to contend that the Court executing decree cannot go behind the decree. It must take a decree as it stands, for the decree is binding and conclusive between the parties to the Suit. It is also not possible to accept this submission. Clauses (e) and (h) of paragraph 35 of the High Court's order dated 25.11.2005 read thus:

(e) The respondent is directed to buy a self-contained flat consisting of a sitting room, bedroom and kitchen of at least 600 sq.feet carpet area in Andheri (West) or Juhu - Vile Parle area in a good housing society in the name of the appellant and her two daughters **by the end of February, 2006. In the event the respondent is unable to do so, he shall deposit an amount of Rs.30 lakhs in this Court by the said date** and on the appellant entering into such an agreement to purchase a flat, the amount will be paid over to the vendor.

(h) **In the event the respondent fails to buy a house or to deposit Rs.30 lakhs and to invest the amounts in the names of the two daughters by end of February, 2006 as directed, it shall be open to the appellant to execute this decree for Rs.50,00,000/- by attaching and selling the Indu Park apartment. In that, it will be open to her to get the possession of the first floor of that apartment in lieu of the flat contemplated under this order.**

(emphasis supplied)

16. A perusal of clauses (e) and (h), extracted hereinabove, clearly shows that in the event of failure on the part of the judgment debtor in buying a house or depositing Rs.30,00,000/- by the end of February 2006, decree-holder was permitted to execute the decree for Rs.50,00,000/- by attaching and selling Indu Park Apartment (suit premises). It was also made clear that it will be open for the decree-holder to get the possession of first floor of that apartment in lieu of the flat contemplated under that order. Thus, the order passed by this

Court, itself, contemplated decree-holder claiming possession of the first floor. As mentioned earlier, decree-holder has pressed prayer clause (a) of Darkhast. It, therefore, cannot be said that the executing Court is going behind the decree.

17. Mr. Pai further submitted that in view of the criminal case pending against the decree-holder, it will not be feasible for the judgment debtor to handover possession of first floor in Indu Park Apartment. Mr. Bhounik invited my attention to the affidavit dated 25.10.2018 made by the decree-holder to the effect that as the judgment-debtor has not complied with the first option, she may be allowed to reside and occupy first floor of Indu Park Bungalow till such time, the judgment debtor purchases the suitable flat in good housing society in her name. Ends of justice will be served if she will be allowed to reside and occupy the first floor of the suit premises till the time, judgment-debtor purchases a flat in a good housing society. I find that the stand adopted by the decree-holder is quite reasonable. While passing the impugned order, the learned trial Judge has considered the fact that judgment-debtor had deposited Rs.30,00,000/- in the year 2014 and after considering the inflation and cost of immovable property in Mumbai in the year 2006 and 2014, the learned trial Judge came to the conclusion that decree-holder will not be in a position to buy apartment or a flat admeasuring 600 sq.ft. carpet area in Andheri (W) or Juhu-Vile Parle for Rs.30,00,000/-. Thus, deposit of Rs.30,00,000/- is not in compliance of order passed by the Division Bench of this Court. Option is given to the decree-holder to execute the decree by seeking possession of first floor of the suit premises. The learned trial Judge, therefore, observed that if the first floor of Indu Bungalow is sold, judgment debtor can raise enough money to provide such property and take away the surplus. The learned trial Judge also dealt with the contention that judgment-debtor's

first wife along with their daughter is residing in the suit premises and the said objection was overruled.

18. In view thereof and for the reasons sated in paragraph 6 of the impugned order, I do not find that the learned trial Judge has committed any error in passing the impugned order. The decree-holder is entitled to possession of first floor of the suit premises with police assistance, if required. The police officials attached to the concerned Police Station shall ensure that decree-holder is put in possession of the suit premises within two weeks from today. The judgment-debtor shall buy an apartment admeasuring 600 sq.ft. carpet area either in Andheri (W) or Juhu-Vile Parle in the name of decree-holder and her daughters. It is only upon purchasing the premises in the aforesaid terms, decree-holder shall shift to the premises so purchased. Till such time, judgment-debtor will permit the decree-holder to occupy the first floor of the suit premises in compliance of order passed by this Court on 25.11.2005.

19. Before parting, it is necessary to consider conduct of the judgment-debtor. As mentioned earlier, the Family Court Appeal was decided on 25.11.2005. Judgment-debtor preferred S.L.Ps. before the Apex Court. By order dated 06.01.2006, notice was issued to the other side and until further orders, order passed by this Court was stayed. On 07.07.2006, the Apex Court granted leave and continued interim order dated 06.01.2006 subject to the petitioner paying a sum of Rs.8,000/- every month for education of the daughters by depositing the amount in the bank account of the daughters. By order dated 27.11.2012, without prejudice to the stand of the parties, the Apex Court directed the petitioner to pay a sum of Rs.10,00,000/- directly to the respondent by way of Demand Draft / Bank transfer, within a period of two weeks. By order dated 07.04.2014, stay was vacated by passing following order:

“ Heard counsel for the parties.

We have noticed that the appellant has been enjoying the order of stay in his favour since 2006 but has not paid any amount to the respondent as per the decree nor a flat has been provided. Therefore, we deem it proper to vacate the order of stay granted in favour of the appellant. The respondent-wife is at liberty to execute the decree and the order dated 25.11.2005.

The appellant, therefore, is directed to provide the respondent with a flat as directed by the High Court in the impugned order. In the event of failure to provide the flat, the respondent-wife shall be at liberty to take such steps as may be appropriate for taking possession of the flat from the appellant-husband.”

20. After the stay was vacated, the judgment-debtor withdrew the appeal on 12.11.2014. While permitting the judgment-debtor to withdraw the appeal, the Apex Court also vacated the interim orders. It is material to note that while withdrawing the appeal, the judgment-debtor did not apply for extension of time stipulated in clauses (e) and (h) of paragraph 35 of the order dated 25.11.2005. If that be so, the deposit of Rs.30,00,000/- made by the judgment-debtor in the year 2014 cannot be said to be compliance of this Court's order dated 25.11.2005. As mentioned earlier, though in the year 1991 itself, MoU was entered into between the parties whereunder, the judgment-debtor agreed to provide accommodation and also further agreed that if he does not provide accommodation within 20 days i.e. on or before 26.03.1991, decree-holder has right to enter the present residence (suit premises). Till date, no accommodation is arranged by the judgment-debtor. That apart, even after passing of the order on 25.11.2005 by this Court instead of complying that order at least by depositing Rs.30,00,000/- by the end of February 2006 or arranging flat either in Andheri (W) or Juhu-Vile Parle, the judgment debtor obtained stay from the Apex Court, which was vacated in the year 2014. Thus, even after the decree-holder succeeded in this Court in the year 2005, till date, no arrangement of her

accommodation is made by the judgment-debtor. The order passed by this Court on 25.11.2005 attained finality upon withdrawal of the appeal by the judgment debtor.

21. Having regard to the conduct of the judgment-debtor in preventing the successful litigant to enjoy fruits of the decree, in my opinion, this is a fit case for imposing exemplary costs on the judgment-debtor. In the case of ***Ramrameshwari Devi Vs. Nirmala Devi*, (2011) 8 SCC 249**, the Apex Court has observed that time has come for imposing realistic costs for delaying litigation as also for raising frivolous pleas. In paragraphs 52 and 54, it was observed thus:

“52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. ...

E. ...

F. ...

G. ...

H. ...

I. ...

J. ...

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation

before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.”

22. In paragraph 55, the Apex Court observed that the other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The judgment-debtor in the instant case has harassed the decree-holder to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts.

23. In the case of *Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria*, AIR 2012 S.C. 1727, the Apex Court referred to the decision of Ramremeshwari Devi (supra). In paragraphs 84 and 85, it was observed thus: -

“False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in *Ramrameshwari Devi* (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for

cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

24. In the case of **Messer Holding Ltd Vs. Shyam Madanmohan Ruia**, AIR 2016 SC 1948, in paragraph 44, the Apex Court referred to the decision of **Ramrameshwari Devi** (*supra*) and observed thus:

“44. This case should also serve as proof of the abuse of the discretionary jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases.”

25. In my opinion, the present proceedings are nothing but abuse of process of court as also abuse of process of law. In view of the decision of the Apex Court in **Ramrameshwari Devi** (*supra*), **Maria Margarida Sequeria Fernandes** (*supra*) and **Messer Holding Ltd.** (*supra*), this is a fit case for imposing exemplary costs against the petitioners. Hence, Petition fails and the same is dismissed by awarding exemplary costs of Rs.1,00,000/- to the judgment-debtor. The costs shall be paid within a period of 4 weeks from today. While allowing the appeal, the Division Bench has considered the fact that the judgment debtor is a wealthy industrialist. I have already referred to the findings recorded by the Division Bench, which considered financial condition of the judgment-debtor.

26. At this stage, Mr. Pai orally applies for stay of this order for a period of 4 weeks from today. Mr. Bhowmik objects to the same.

27. Having regard to the conduct of the judgment debtor, I do not find that the application made by Mr. Pai is reasonable. Hence in the circumstances, oral application is rejected. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab