

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 526 OF 2017

Nallepalli Subramanian Rajaraman	...	Applicant
V/s.		
Anil Dayaram Agarwal & Anr.	...	Respondents

- Mr.M. K. Haridas Nair for the Applicant.
- Mr.Sanjay Udeshi a/w. Mr.Aditya Bhat, Mr.Kaushal Udeshi i/b. M/s.Sanjay Udeshi & Co. for Respondent No.1.
- Mr.Vijay D. Patil for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the parties.
- 2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) the Applicant is challenging the order dated 1st July 2016 passed below the Application at Exhibit-53 in Special Darkhast No.57 of 2014.
- 3] The Application at Exhibit-53 was filed by the present Applicant, who is the Judgment Debtor No.1 in the execution proceeding before the trial Court. According to him, the Decree Holder has committed fraud by producing two different sets of documents i.e. "Agreement to Assignment of Lease". Both were marked at Exhibit-86.

It is his contention that the description of the said agreement which is reflected in the judgment of the trial Court is not matching with the agreement produced on record at Exhibit-86 and therefore, the said document might have been withdrawn or replaced.

4] The similar contention was raised by the present Applicant in Miscellaneous Civil Appeal No.60 of 2016, which was preferred by him against the order passed below Exhibit-1 in Special Darkhast No.57 of 2014 on 7th November 2015. In the said Appeal, the Appellate Court has, in order to satisfy itself whether there is any such forgery or replacement of the document, committed by any of the party to the suit or anyone else, has called for the record and proceeding in Special Civil Suit No. 363 of 2011 including the original Exhibit-86, instead of relying even on the photocopies produced before it. As can be seen from the paragraph No.13 of the Appellate Court judgment, which is considered by the Executing Court also, the Appellate Court was satisfied that there is no such fraud committed, as claimed by the Applicant, nor the original agreement Exhibit No.86 is replaced or withdrawn. It was found by the Appellate Court on perusal of the original Agreement Exhibit-86 that, there was mention of the payment of Rs.25 lakhs as consideration amount and hence, it was held that though the Nazir of the Court of Civil Court Senior Division has raised objection that in the draft of Deed of Assignment of Lease,

there was no mention of receipt of Rs.25 lakhs, however, on perusal of original Exhibit-86, in its Annexure, there was clear mention of the said fact.

5] Thus, despite such objection being raised and decided by the Appellate Court in the appeal, the Applicant has again raised the same objection before the Executing Court and that too, after the execution of the possession warrant is completed. Those objections were again dealt with in detail by the Executing Court. As can be seen from its order in paragraph Nos.4, 6 and 8, each and every aspect of the contention raised by the Applicant in respect of the document at Exhibit-86 is considered by the Executing Court and it was found that even if there are some discrepancies, it does not mean that there were two sets of documents. It was held that, though Exhibit-86 shows that the said document is proved by P.W.-4 and it is read and recorded by the Court in the judgment, it is mentioned to be proved by Defendant No.2, which appears to be clearly a typographical error as instead of mentioning that document Exhibit-86 is proved by P.W. No.4, it was mentioned in the judgment that, it was proved through the evidence of Defendant No.2. However, that will not change the original document.

6] As such Executing Court has again considered the remaining contentions raised by the Applicant that the Defendant

No.2 has signed on it as consenting party to Defendant No.1 to assign his leasehold rights to Plaintiff. The Executing Court has also rightly held that the judgment has to be read as a whole and if it is read as a whole then it reveals that description of the document Exhibit-86 is rightly mentioned in the judgment.

7] Thus, here, in the case, both the Appellate Court and the Executing Court, have considered all the grievances of the Applicant, in order to satisfy themselves that no such forgery or replacement of the document has taken place. The impugned order of the Executing Court also goes to show that, even after perusal the entire record of the said suit, to ascertain whether there was any application to take back the document, no such application was found in the record of the case.

8] In such situation, there hardly remains any substance in the grievance raised by the Applicant, so that this Court should order enquiry in its Revisional jurisdiction, by disturbing the concurrent finding or fact recorded by the Executing Court and the Trial Court.

9] The Civil Revision Application hence being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]