

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

WRIT PETITION NO.430 OF 2016

1 Shri Sujan Bhabani Prasad Chatterjee
Age: 56, Occ: Service,
303, C-2, Flamingo,
Neelkanth Greens,
Manpada, Ghodbunder Road,
Thane (West), 400 610.

2 Mrs. Dipanwita Sujan Chatterjee
Age: 49, Occ: Housewife,
303, C-2, Flamingo,
Neelkanth Greens,
Manpada, Ghodbunder Road,
Thane (W) 400 610

... Petitioners

Versus

1 Shri Rajendra Kumar Singh
Flat 1901, Lightbridge Building,
Hiranandani Meadows,
Glady's Alwares Road,
Thane (W), 400 610

2 The Senior Manager,
Bank of India,
Servants of India Society Bldg.,
417, Sardar V.P.Road,
Prarthana Samaj,
Mumbai 400004

... Respondents

...

Dr. D.S. Hatle with Mr. Jamsandekar Deepak Pundlik for the Petitioners.

Mr. Shanay Shah with Ms. Huzefa Khokhawala with Ms. Gauri Menon I/by Nankani Associates for the Respondent No.1.

Mr. O.A.Das for Respondent No.2.

CORAM : SANDEEP K. SHINDE J.

RESERVED ON : JULY 8, 2019

PRONOUNCED ON: JULY 18, 2019

ORAL JUDGMENT :

Rule. Heard. With consent of the parties, heard finally at the admission stage.

2 Petitioners (Plaintiffs) instituted Special Civil Suit No.660 of 2014 against the respondents/defendants seeking following reliefs:

“(i) The Defendant No.2 be directed to handover the chain of documents in respect of the suit property, which have been mortgaged to the defendant no.2 by the defendant no.1 and the same are lying in the safe custody of the defendant no.2.

(ii) The Defendant No.1 be ordered, decreed and directed to pay the amount of Rs.3,24,706/- (Rs.1,55,000/- + Rs.1,24,000/- + Rs.45,706/-) (Rs. Three Lakhs Twenty Four Thousand Seven Hundred and Six Only) to the Plaintiffs being the amount paid to him in excess than the consideration value as per the Agreement for Sale, which is attributable on his part.

(iii) The Defendant No.1 be further directed and

ordered to pay the compensation of Rs.5,00,000/- (Rupees Five Lakhs Only) to the plaintiffs for causing the mental and physical harassment to them.”

Pending suit, he filed an application seeking directions to the return of documents of defendant no.2 Senior Manager of the Bank of India, Mumbai to handover documents of title of the flat no.303 to him. The learned Judge rejected the said application on 31st October, 2015 against which this writ petition is preferred under Article 227 of the Constitution of India.

FACTS:

3 Respondent No.1-Defendant No.1 executed agreement for sale on 11th February, 2014 and agreed to sell flat no.303 third floor, type 'C' Nilkanth Co-operative Housing Society Ltd., Ghodbunder Road, Thane (West) (hereinafter referred to as 'Suit Flat') to the petitioners upon certain terms and conditions, which were as under:

(1) The total agreed consideration is Rs.1,24,00,000/-

(2) In terms of clause 1(vii), balance Rs.17 lakhs

were payable on or before 5th March, 2014 subject to availability of mortgage, NOC from the society and original agreement of flat executed between the defendants (Vendors), and builder, registration receipt and any other document required by the banker of the purchaser for loan disbursement amount.

. Agreement has been registered with Sub-Registrar on 11th February, 2014. Possession was handed over by D/1 to the plaintiffs on 25th March, 2014. On the same day, D/1 applied for transfer of his shares in the housing society to the petitioners.

4 Clause (iii) of the agreement reads as under:

“3 In pursuance of the said Agreement and in consideration of the price when fully paid by Purchasers/Transferees, Vendor/Transferor undertake to hand over to purchasers/Transferees the vacant and peaceful possession of the said flat and all original document pertaining to said flat on or before –/---/20 subject to the realization of the cheque/s.”

5 It is plaintiffs' case that flat no.303 was mortgaged by the defendant no.1 to defendant no.2-Bank and in terms of

the agreement, defendant was under obligation to obtain and handover original title deeds and all chain of title documents of flat no.303, executed between him and builder to the plaintiffs to enable them to secure loan from their banker. Be that as it may, for one reason or another, original title deeds have not been handed over to the plaintiffs in spite of the fact that they paid entire consideration as agreed under the agreement dated 11th February, 2014. It is the plaintiffs' case that besides agreed consideration, they paid Rs.1.55 lakhs to defendant no.1 towards incidental expenses by cheque. It is plaintiffs' case that they paid Rs.3,24,706/- to the defendant in excess of the agreed consideration. It is their case that loan availed against mortgage of the flat has been repaid yet title deeds of the flat have not been released by the D/1 and are still lying in the custody of defendant bank. Plaintiffs further state though defendant no.1 admits and acknowledges receipt of consideration under the agreement, he withheld the title documents illegally and under these circumstances, he instituted the suit and sought reliefs as

stated hereinabove. Defendant no.1 filed Written Statement and disputed terms of the agreement dated 11th February, 2014. In paragraphs 8 and 14, defendant submits that agreed consideration was in excess of Rs.1,24,00,000/-. In paragraph 9, he states that total consideration was Rs.2,10,00,000/-. His defence in paragraph 3(d) is as under:

“3(d) In the first week of February, 2014 the Plaintiffs represented to the Defendant that they would now embark upon preparing an Agreement for Sale and incorporate therein all the terms and conditions, mentioning therein the consideration paid so far by the Plaintiffs to the Defendant and balance amount to be paid. In fact the Plaintiffs had till 5th March, 2014 paid an amount of Rs.1,07,00,000/- (Rupees One Crore Seven Lakhs Only) and thereby a feeling of faith got created in the mind of this Defendant. During the passage of time, the Plaintiffs themselves got the Sale Agreement prepared and also paid the necessary stamp duty and annexed to the agreement all the relevant documents including the PAN Cards, photographs, etc. The Plaintiffs thereafter requested the defendant to remain present in the office of the Sub-Registrar, Thane on 11th February, 2014 to submit the documents for registration and complete the formalities thereof. The Plaintiffs categorically informed the defendants that all the relevant terms and conditions, etc. were incorporated in the sale agreement. Quite strangely the plaintiffs informed the defendants that the Registrar's office would remain open even after 6.30 p.m. and that they would work till 9 p.m. on the date of registration. Believing in the representations of the plaintiff, defendant reached the office of the Sub-registrar at 6 p.m. when the plaintiffs and the broker obtained the

signatures of this defendant on the sale agreement wherever required without actually allowing the defendant no.1 to go through the contents thereof. The said signatures were obtained in hasty manner by representing that if the same is not presented for registration, then the whole exercise of registering the document on 11th February, 2014 would go waste. It was under such circumstances, believing in the representations of the plaintiffs that this defendant signed the agreement; and ultimately got it registered on the same day i.e., 11th February, 2014. The Plaintiffs at the relevant time assured this defendant to hand over photo-copy for certified copy of the registered agreement to the defendant for their record purpose.”

In other words, it is the defence of respondent no.1 that agreed consideration was in excess of Rs.1,24,00,000/- and his signatures were obtained by the plaintiff and the broker without actually allowing the defendant to go through the contents thereof. He would, therefore, contend that said signatures were obtained in hasty manner by representing that, if the same were not presented for registration then whole exercise of registering document would go waste. He would, therefore, say that under such circumstances, believing in the representations of the plaintiffs, he signed the agreement and got it registered on the same date.

5 Pending suit, plaintiffs sought directions to the

defendnt-Bank to hand over documents of title of the flat no.303 to them. The learned Judge rejected the said application on the ground namely that as per Banking Regulations Act and RBI Guidelines, banker may release original title deeds to the mortgagor and not to the plaintiffs and, therefore, passed the following order:

“Defendant No.2 (Bank) may release as per banking procedure and as per law and RBI guide-lines, original title deeds to defendant no.1 only and defendant no.1 shall take all the original documents from the bank and thereupon certified copy of original title deeds may be placed on record for adjudication of civil rights in this suit.”

6 Aggrieved by the order as aforesaid, this Writ Petition is preferred. The question is, whether the learned Judge was justified in rejecting the request of the petitioners for releasing title deeds of the flat and hand over the same to them.

7 Indisputably, the agreement to sale executed on 11th February, 2014 is a registered document wherein the agreed consideration is Rs.1,24,00,000/-. In pursuance to the agreement, defendant no.1 handed over possession of Flat

No.303 to the plaintiffs vide possession letter dated 25th March, 2014, wherein he has acknowledged receipt of full consideration in the following terms;

“Thus, I have received full and final price or consideration of Rs.1,24,00,000/- from Sujan Chatterjee and Mrs. Chatterjee and there is nothing due and payable by him for the sale of the flat for transfer of shares of the suit flat.”

8 On the same day, defendant requested Secretary of the society to transfer the shares and admit plaintiffs as member of the society as he sold the flat no.303 to them. Besides there is undated receipt signed by defendant no.1 admitting receipt of full and final price/consideration for the sale of flat no.303. This receipt is appended to the form of application for membership of the society to be made by the proposed transferees. Defendant no.1 under the agreement had agreed to hand over to the purchaser all original documents pertaining to the said flat subject to realization of the cheques. Thus, upon

reading the receipts, possession letter and the fact that the possession has been handed over and the petitioners are admitted to the membership of the society, it is inconceivable to accept the contention of defendant no.1 that the executed agreement, was without allowing him to go through the contents thereof. In the Written Statement, it is not his contention that the possession letter dated 25th March, 2014 and the receipt appended to the application made to the society were also obtained on misrepresentation and/or under undue influence and/or without explaining contents thereof. One cannot overlook the fact that the suit has been instituted in October, 2014 and the Written Statement is filed in April, 2015 wherein for the first time D-1 disputed the amount of agreed consideration and contended that agreement was signed by him hurriedly and in the given circumstances, he was not permitted to read contents thereof. It is after one year, D-1 disputed the consideration and contended that agreed consideration was Rs.2,10,00,000/- and not Rs.1,24,00,000/-.

It may also be stated that from the date of execution of the agreement till filing of the Written Statement. D-1 did not make any complaint or raise grievance about the consideration. When this Court enquired with the counsel for respondent no.1, whether any criminal complaint was filed for alleged misrepresentation, he replied that no such complaint has been filed by respondent no.1. It may also be stated that defendant no.1 is not an illiterate person and besides, no prudent person would hand over possession of the flat unless he receives entire consideration from the purchaser nor wait to raise his grievance for one year. Thus, taking into consideration facts of the case, the stand which is raised belatedly, it is to be held that such defence is not bonafide and thus only an afterthought.

8 Section 60 of the Registration Act provides that certificate endorsed on the document by the Registrar is not only admissible in evidence for purpose of proving that document has been duly registered in the manner provided in the Act but also that facts mentioned in the document referred to in Section 59 have

taken place as mentioned therein. It is now well settled that presumption of due execution of the document arises from the endorsement of the Sub-registrar under Section 60 of the Registration Act. Sub-section (2) of Section 60 reads as under:

“60. Certificate of registration.—

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in section 59 have occurred as therein mentioned.”

Therefore, there is presumption, which attaches to the correctness of the endorsement made on the document by the Registrar's office. Thus, taking into consideration facts of the case coupled with presumption arising out of endorsement under Section 60(2) of the Registration Act, it cannot be said that defendant was ignorant about the contents of the agreement when it was executed. Admittedly, in the case in hand, there is certificate by the registering authority in terms of Section 62 of the Registration Act.

9 Though the defendant no.1 filed Written Statement and

would contend that agreed consideration was Rs.2,20,00,000/-, he has not raised counter-claim for the balance amount which according to him, is payable by the plaintiffs. If at all such amount is due, as claimed by him, nothing prevented him to raise counter-claim when he submitted his Written Statement.

10 Thus, upon considering facts of the case, in my view, the petitioners/plaintiffs cannot be deprived of their right to receive the title deeds of the flat from defendant no.1. I do not see any reason to withhold this document until disposal of the suit. In view of the facts stated hereinabove and for the reasons stated, defendant no.2 is directed to deposit original title deeds relating to the suit flat in the Court of 6th Joint Civil Judge, Senior Division, Thane within two weeks from the date of uploading this judgment and thereupon the learned Court shall hand over these documents to the petitioners within two weeks therefrom unconditionally. Impugned order is

quashed and set aside. Petition is allowed in aforesaid terms and disposed of.

11 The learned counsel for the petitioners submits and prays that operation of the direction to hand over these documents to the petitioners within two weeks, may kindly be suspended for a period of four weeks. Upon consideration of the facts of the case and for the reasons stated in the judgment, the prayer and the request of the petitioners is rejected.

(SANDEEP K. SHINDE, J.)