

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

WRIT PETITION NO.7314 OF 2019

Rebecca Nissim Samuel ... Petitioner
Vs.
Sunil Jugalkishore Gupta & Ors. ... Respondents

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Mr. Rahul Narichania a/w Farhan Subash a/w Siddhanth Chhabria & Vaishali Chaturvedi I/b. Solomon & Co. for the Petitioner.

Zubin Kamdin a/w Dhanashree Gaikawaiwari I/b. M/s. Bilawala & Co. for Respondent Nos.1 and 2.

Mr. Anupam Surve a/w Ms. Hilla Boatwalla a/w Ms. Ashwini Sonawane I/b. Nanu Hormasjee & Co. for Respondent No.4.

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CORAM : M. S. KARNIK, J.

DATE : 5th SEPTEMBER, 2019.

P. C.:

1. Heard learned Senior counsel for the petitioner and learned counsel appearing for respondent Nos.1, 2 and 4.

2. The petitioner is the original defendant No.1. The respondent Nos.1 and 2 - original plaintiffs filed a suit for specific performance of an agreement. The husband of defendant No.1 had executed the agreement in favour of the plaintiffs on the basis of the power of attorney executed by the defendant No.1.

It is the case of the defendant No.1 that her husband never intended to execute the agreement and moreover he was pressurised to execute the agreement of sale. The suit is of the year 1988. The cross examination of defendant No.1 is over. The defendant No.2 is the son of defendant No. 1.

3. Learned Senior counsel appearing on behalf of the petitioner-defendant No.1 has by this petition challenged the order dated 30.4.2019 passed by the Trial Court below Exhibit 25. By filing application below Exhibit 25 the defendant No.1 sought leave of the Court for examining the valuer as her witness. Learned Senior counsel would invite my attention to the written statement where a specific case is pleaded by defendant No.1 that the value of the property in question is much more than Rs.25,00,000/-. In written statement it is specific case of defendant No.1 that the value of the suit property would be more than Rs.1 Crore. It is thus the case that the property is grossly undervalued at the time of entering into the agreement of sale.

4. By filing the application Exhibit 25 the defendant No.1 wanted to examine the valuer. The Trial Court rejected the

application on the ground that the defendant No.1 wants to examine the additional witnesses without filing list of witnesses. The Trial Court opined that without filing list of witnesses, prejudice would be caused to the plaintiff. Furthermore the Trial Court was of the opinion that the suit is pending for 31 years and therefore at this stage it would not be appropriate to allow the application.

5. Learned counsel for the respondent Nos.1 and 2-original plaintiffs supported the order passed by the Trial Court. He invited my attention to the written statement filed by respondent No.4-original defendant No.2 who is the son of defendant No.1. He also invited my attention to the valuation report which has been relied upon by the defendant No.2 in support of his case. He would submit that defendant No.2 is yet to enter into the witness box. According to him the evidence of defendant Nos.1 and 2 is the same and the defendant No.2 has relied upon a valuation report. In these circumstances he would submit that apart from the fact that the application is made to delay the proceedings, no prejudice would be caused to the defendant No.1 if the witness is not examined.

6. Heard learned counsel for the parties. No doubt defendant No.1 has been cross examined and after her cross examination is over, the application below Exhibit 25 is filed on 30.4.2019. In the written statement the defendant No.1 has categorically stated that the value of the suit property is more than Rs.1 Crore. The agreement of sale is for Rs.25,00,000/- which according to defendant No.1 is grossly undervalued. It is in these circumstances, if the defendant No.1 wanted to examine the witnesses as regards valuation of the suit property, there was no difficulty for the Trial Court to have allowed the said application. Merely because the defendant No.1 has not filed list of witnesses is no ground to reject the application, more so when the interest of justice would be sub served if the witness is examined. In view of the delay in filing the application, the respondent Nos.1 and 2-plaintiffs can be adequately compensated with cost. The suit is pending more than 31 years. Considering the cross examination of defendant No.1 is over, I am inclined to allow this petition by expediting the Trial and by imposing costs.

7. Learned Senior Counsel states that on behalf of defendant No.1 only the valuer Shri Harshad Maniar is to be

examined and undertakes that no further witness on behalf of defendant No.1 will be examined. Learned Counsel further undertakes on instructions that the defendant No.1 would co-operate with the Trial Court in expeditious disposal of the suit and will not seek unnecessary adjournments.

8. The petition is therefore allowed subject to cost of Rs. 50,000/- payable by the petitioner to the respondent Nos. 1 and 2 within a period of two weeks from today. The Trial Court is requested to hear the suit as expeditiously as possible and in any event within a period of six months from today.

9. The petition is allowed. The impugned order is set aside. The application Exhibit 25 is allowed.

(M. S. KARNIK, J.)