

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (STAMP) NO.25250 OF 2019**

Shri Surendra Ratanshi Savla

...Petitioner

vs

Smt. Usha Sureshchandra Bhatt & Ors.

...Respondents

.....

Mr. Jitendra G. Damani, a/w. Ms. Manasi C. Pandit, for the Petitioner.

Mr. Jaydeep Deo, for the Respondents.

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CORAM : S.C. GUPTE, J.**DATED: SEPTEMBER 13, 2019****P.C. :**

. Heard learned Counsel for the parties.

2. This petition, which challenges orders passed by the trial court in execution of a decree, is a classic example of how the process of law is misused by unscrupulous litigants.

3. The Petitioner herein was a defendant to an eviction suit filed by the Respondents (original plaintiffs). Plaintiff Nos. 1 to 3 are owners and landlords of the suit premises, namely, Room Nos. 4 and 5, Bhatt Wadi, bearing CTS No.104A, Final Plot No.75, Jambli Galli of Village Borivali. Plaintiff No.4 is a developer of this property along with other structures/chawls and holds a power of attorney from plaintiff nos. 1 to 3 for the purpose. Plaintiff Nos. 5 to 9 are heirs and legal

representatives of the original landlady of the suit property, one Lilavati Laxmidas Bhatt (since deceased). They are beneficiaries of the suit property under the last will and testament of late Lilavati. The property consists of 11 structures/chawls occupied partly by various tenants/occupants and partly by some of the landlords. One Ratansi Savla was a tenant of the suit premises. He expired, leaving behind the present defendant as his legal heir and representative. The carpet area of the suit premises is said to be 520 sq.ft. An eviction suit was filed by the plaintiffs against the defendant in the Court of Small Causes in Mumbai at its Bandra Branch with a plea that the suit premises were needed by them for demolition of the old structures/chawls and construction of a new building. They offered to provide alternative accommodation to all tenants of the old structures/chawls including the defendant. The permanent accommodations offered were of the same carpet area as the respective tenements with a variation of 5%. It was the plaintiffs' case that out of total 78 tenants in occupation of the structures/chawls, agreements for alternative accommodation were entered into with about 60 tenants; negotiations were being conducted with some others; and suits were filed/proposed to be filed against the remaining tenants/occupants. The defendant was one of these latter tenants/occupants against whom eviction suits were filed. The trial court, by its decree dated 2 May 2016, decreed the plaintiffs' suit and directed the defendant to handover vacant and peaceful possession of the suit premises within two months. The plaintiffs were directed to comply with under Section 16(6)(d) of the Maharashtra Rent Control Act, 1999 ("Act") and file undertakings.

4. One of the questions, which was considered by the trial court in its decree, was the extent of carpet area of the suit premises. It was the submission of the plaintiffs that the suit premises admeasured 513.38 sq.ft. (carpet); the plaintiffs were ready to give one flat, being Flat No.203 in "C" Wing of the proposed new building with an equivalent carpet area, subject to variation of 5%, to the defendant. On the contrary, it was the defendant's contention that the carpet area of the suit premises was more than 700 sq.ft. and the area of the new premises offered to him was less than what the Act provided for. The trial court, after going into the submissions of the parties and considering the evidence on record, held that the carpet area of the suit premises was 513.38 sq.ft. and that the plaintiffs' offer of a flat of an equivalent carpet area subject to variation of 5% was in order. This decree was carried in appeal by the defendant before the appellate bench of the Court of Small Causes. By its judgment dated 2 May 2018, the appeal was partly allowed. The appellate bench observed that the eviction decree passed by the trial court was legal and proper, but that the alternative premises to be allotted should have been in Wing 'A' of the suit property and of 609.27 sq.ft. as per the development agreement. The defendant was directed to handover vacant and peaceful possession of the suit premises within ten weeks. The appellate order was challenged both by the plaintiffs and the defendant by two separate CRAs. Both CRAs were disposed of by this Court by its order dated 9 August 2018. The disposal order was on the basis of an agreement between the parties. On behalf of the developers (plaintiff no.4) an offer was made to the defendant for allotment of a flat admeasuring 609.27 sq.ft. (carpet) area in 'A' Wing either on 4th, 5th or 6th floor on

tenancy basis, subject to obtaining an occupation certificate from the Municipal Corporation. This flat, according to the plaintiffs, was to get ready within three years; till then, by way of a stop gap and temporary arrangement, an offer was made to handover Flat No.203 admeasuring 609.27 sq.ft. (carpet) area in 'C' Wing to the defendant. On behalf of the defendant it was submitted that within one week of the plaintiffs offering Flat No.203 in 'C' Wing, the defendant would shift there and handover the possession of the suit premises to the plaintiffs. The defendant expressed readiness and willingness to accept the permanent alternative allotment of a flat in 'A' Wing admeasuring 609.27 sq. ft. (carpet) area either on 4th, 5th and 6th floor on tenancy basis. He offered to handover vacant and peaceful possession of Flat No.203 in 'C' Wing, allotted to him as a stop-gap arrangement, within two weeks of the plaintiffs offering him a flat in 'A' Wing in accordance with their undertaking. The defendant offered to file his own undertaking on these lines to the Court within a week. In view of the consensus between the parties, both CRAs were disposed of *inter alia* by noting the statements of the parties and directing them to file their respective undertakings with advance copy to each other. Based on this order, an undertaking was filed by the plaintiffs before the Court on 16 August 2018. By this undertaking, the plaintiffs undertook to offer possession of Flat No.203 and 204 admeasuring in the aggregate 685 sq.ft. (carpet) in 'C' Wing of Om Fortune building to the defendant as and by way of a stop-gap arrangement as a transit accommodation. The plaintiffs undertook to revise the plans of 'A' Wing for carving out a residential flat admeasuring 609.27 sq.ft. (with 5% permissible variation) for the defendant. The plaintiffs undertook to allot such flat (flat admeasuring 609.27 sq. ft.

(carpet) area in 'A' Wing) either on the 4th, 5th or 6th floor to the defendant on tenancy basis as a permanent alternative accommodation on the same terms and conditions as were applicable to the existing tenancy within a period of two years from 9 August 2019, subject to obtaining occupation certificate from the Municipal Corporation and subject to *force majeure*. As for the defendant, he never filed any undertaking before this Court.

5. On these facts, one would have expected the defendant to go ahead and handover possession of the premises to the plaintiffs. He, however, did not do so. Instead, he proceeded to file a civil application before this Court, being Civil Application No.553 of 2018, in his original CRA. By this application, the defendant prayed for review of the order of 9 August 2018 passed by this Court in the two CRAs referred to above. The Court was requested to decide the CRAs on merits. There was also a prayer made for directions to the plaintiffs to provide premises admeasuring 609.27 sq.ft. (carpet) area in 'A' Wing and to file an undertaking in that behalf in accordance with the provisions of law. After considering the application at length, this Court dismissed it comprehensively. This Court *inter alia* observed that the order under review was passed by consent of parties; in pursuance of this order, the plaintiffs had already filed their undertaking; the defendant had not filed his undertaking till date; the prayer in the application for provision of premises admeasuring 609.27 sq.ft. (carpet) in 'A' Wing, was already granted in terms of the order of 9 August 2018; and no case was, accordingly, made out for review of the order of 9 August 2018. The Court, accordingly, directed drawing of a decree in accordance with the

order of 9 August 2018 passed in the two CRAs and the plaintiffs were given liberty to execute such decree in accordance with law.

6. This order was not carried by the defendant any further. One would have expected that things finally came to a rest with this order. But that was not to be. The defendant preferred a second application, being Civil Application No.37 of 2019, praying practically for a review of the order passed by this Court in review in the earlier civil application along with the common order passed on 9 August 2018 in the two CRAs, once again requesting the Court to restore the CRAs on file, and rehear and decide the same on merits in accordance with the provisions of Section 16(1)(i) read with Sections 16(6)(d)(i) to (v) of the Act. The civil application was rejected by the Court, finding no merit in it. The Court, in the first place, noted that the CRAs, as noted earlier, were disposed of on 9 August 2018 by consent of parties. A civil application seeking recall of that order (Civil Application No.353 of 2018) was rejected by the Court finding no merit in it; in pursuance of the order of 9 August 2018, the plaintiffs had filed an undertaking on 16 August 2018; this undertaking was discussed in detail in its order dated 21 December 2018 passed in Civil Application No.353 of 2018. As against this, the Court noted, the defendant had not filed any undertaking. The Court did not find merit in the defendant's contention that the offer now made by the plaintiffs, i.e. the offer to give Flat No.203 and 204 in 'C' Wing admeasuring together 685 sq.ft. (carpet) area, was not in tune with the offer recorded in the order of 9 August 2018. The Court noted that, in fact, the defendant was giving area in excess of 609.27 sq.ft. The Court particularly noted having recorded in

its order of 21 December 2018, how the defendant had made repeated attempts to delay the matter first by filing an application for transfer and when that was turned down, by refusing to argue the application and instead by repeatedly applying for time. The Court noted that the defendant had misused the indulgence shown by the Court on various occasions and that, in the premises, the Court had to consider his civil application (Civil Application No.553 of 2018) on merits. The defendant's contention that the plaintiffs had to enter into an agreement with respect to the alternative accommodation offered by them in 'A' Wing, did not find favour with the Court. The Court observed that though the earlier application was dismissed, repeated attempts were made by the defendant for the self-same relief of recall of the earlier orders. The Court particularly observed that the defendant had, by means of these successive applications, avoided to handover possession of the suit premises to the plaintiffs even after the disposal of the CRAs on 9 August 2018 and till date. The Court, lastly, observed that what the defendant was claiming was nothing but premises admeasuring 609.27 sq.ft. (carpet) area in 'A' Wing, which the plaintiffs had already agreed to provide. The Court was of the view that the application was nothing but an abuse of the process of the Court as also the process of law. The Court, however, refrained from imposing costs on the defendant, though it found merit in the submission of the plaintiffs' Advocate in that behalf.

7. That should have finally settled the controversy. The matter, however, did not rest there. A further civil application was made by the defendant (Civil Application No.248 of 2019) for the self-

same reliefs. This application has been pending in this Court; there has been no order passed in the interregnum, however.

8. In the backdrop of these facts, the plaintiffs applied for execution of the eviction decree. The execution was clearly in order. The plaintiffs even obtained an order of police assistance for execution. Even that was in order, having regard to the facts of the case. By its order dated 2 May 2019, in the premises, the trial court ordered re-issue of warrant of possession in view of Order 21 Rule 35 (1) of the Civil Procedure Code against the defendant, requiring delivery of vacant and peaceful possession of the suit premises to the plaintiffs. The bailiff, however, could not execute the possession warrant. It was resisted by the defendant, who filed an application, being Exhibit 14, for setting aside the order of reissue of possession warrant passed on 2 May 2019. The Court heard the parties and rejected that application. That was on 5 July 2019. The Court particularly found no substance in the contention of the defendant/judgment debtor that a formal agreement in respect of allotment of flat in 'A' Wing had to be executed. The Court noted that the judgment debtor simply wanted to avoid execution of the decree without making out any case for setting aside the possession warrant.

9. Even after all this, the defendant made one more application, being Exhibit 17, this time to set aside the order passed by the trial court on Exhibit 14 on 5 July 2019. That application was rejected by the trial court on 14 August 2019, and the bailiff was directed to execute the warrant of possession pursuant to the order of 5 July 2019. Time was, however, given to the defendant of one month,

during which the possession warrant was not to be executed. If, within this month, the judgment debtor failed to obtain stay from the higher court, the warrant of possession, coupled with police aid, was to be executed.

10. It is in these circumstances that the defendant has now approached this Court in the present writ petition challenging the orders passed by the executing court on 2 May 2019, 5 July 2019 and 14 August 2019. It is difficult to even speculate what could be an abuse of the process of law if all this is not. The same prayers have been repeated in the present writ petition. These were made for the first time in Civil Application No.553 of 2018, when they were comprehensively rejected by this Court. That was on 21 December 2018. The same prayers were repeated in two more civil applications, as noted above, and were rejected or not accepted by the Court, this Court making it loud and clear that the defendant was acting in abuse of the process of Court as also the process of law. The prayers were thereafter repeated in three applications made to the executing court. That was after two civil applications were rejected by this Court, and one, as noted above, was simply pending with no orders passed thereon. Each of the contentions of the defendant, namely, (i) that the plaintiffs did not give any undertaking as required by Section 16(6) of the Act, (ii) that the plaintiffs did not enter into agreement with respect to the alternative accommodation offered to the defendant in 'A' Wing of the new building, (iii) that there was no certainty as to the offer of possession of the alternative accommodation, is a mere repetition of what was contended before the Court in civil applications already disposed of.

11. The Petitioner's original challenge to the order of the Court of Small Causes having been disposed of in terms of the order passed on his CRA on 9 August 2018 and the undertaking furnished by the plaintiffs in pursuance of that order having been accepted as a due compliance of the provisions of law in the civil applications referred to above, there is nothing to be decided further. The execution must proceed.

12. The present writ petition, as I have taken pains to note in the order above, is a sheer abuse of the process of law and deserves to be dismissed with compensatory costs.

13. The petition is accordingly dismissed. The Petitioner (original defendant) shall pay costs of this petition computed at Rs. 1 lakh to the Respondents in one set through their Advocate. The costs shall be paid within a period of four weeks from today and shall be condition precedent for any application hereafter to be made by the defendant.

14. Learned Counsel for the Petitioner has yet another trick up his sleeve. He applies for stay of this order. The application is rejected.

(S.C. GUPTE, J.)