

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT (L) NO.1444 OF 2018
WITH
COURT RECEIVER'S REPORT NO.73 OF 2019
IN
SUIT (L) NO.1444 OF 2018**

Mahant Baba Mohandasji Chela
of Baba Uttamdasji and Anr.

....Plaintiffs

Vs.

Shabbir S. Khan and Ors.

....Defendants

Mr. Priyank Kapadia a/w. Ms. Minal Chandnani i/b. Minal Jaiwant Chandnani for plaintiffs.

Mr. Mahesh Kumar Deviprasad Tiwari for defendant no.1.

Mr. Anil D'souza a/w. Mr. Suprabh Jain i/b. Mr. Ankitkumar H. Pandey for defendant nos.2, 3 and 4.

Mr. Shabbir S. Khan, defendant no.1 and Mr. Niraj Jain, defendant no.3 present.

Mr. D.N. Kher, Court Receiver present.

CORAM : K.R.SHRIRAM, J.

DATE : 9th AUGUST 2019

P.C.:

1 Paragraphs 1, 2 and 3 of the order dated 28th June 2019 read as under :

1. Pursuant to order dated 26.4.2019 defendant nos.2, 3 & 4 are present in Court. Mr.Jain identifies defendant nos.2, 3 & 4. Mr.Jain states that before the warrant of arrest could be served, defendant nos.2, 3 & 4 presented themselves before the Police and have come to Mumbai accompanied by the Police from Gwalior, Madhya Pradesh. Mr.Jain states that the bail amount of Rs.1,00,000/ each will be deposited with the Prothonotary & Senior Master, High Court, Bombay, today itself.

2. Mr.Jain states that defendant no.3 for himself and for defendant nos.2 & 4 has affirmed an affidavit dated 19.6.2019 which will be filed in the registry during the course of today. Mr.Kapadia for plaintiff states that he has been served a copy only in Court and requests the matter be stood over to enable him to take instructions.

3. Mr.Jain states that defendant nos.2, 3 & 4 do not wish to make any claim over the suit property and hereby relinquished their right, title and interest or any claim whatsoever with regard to the suit property. Defendant nos.2, 3 & 4 who are present in Court concur with what Mr.Jain states. Defendant no.2 states she is not well versed with English but defendant no.4 her daughter has explained to her what is being recorded in the Court, the statement made by Mr.Jain and the contents of the affidavit of defendant no.3. Mr.Jain states that defendant no.2 will be produced before the Chief Interpreter and Translator of this Court today itself so that contents of the affidavit can be explained to defendant no.2.

2 As defendant no.1 was absent and unrepresented, this Court directed issuance of non bailable warrant of arrest against defendant no.1. On 19th July 2019, the matter was again stood over as the office of the Commissioner of Police neither executed the warrant of arrest nor submitted a report. The office of the Commissioner of Police was directed to ensure personally that the non-bailable warrant is executed upon defendant no.1. The Prothonotary and Senior Master has placed on record a letter dated 26th July 2019 from Dinesh Kadam, Senior Inspector of Police, Byculla Police Station, simply returning the non-bailable warrant because defendant no.1 was not found at the address and seeking a further date for execution. In the letter, it is stated that when one Madhukar Pedamkar was deputed for execution of the arrest warrant, defendant no.1 was not found at the address but somebody else was found who explained her ignorance on the whereabouts of defendant no.1. The letter is totally silent as to when this attempt was made and what further steps were taken when defendant no.1 was not found. I have to note that the approach of the Senior Inspector of Police, Byculla Police Station has been absolutely casual and the contents of

the letter smacks of gross irresponsibility on his part. A copy of this order be placed in his career records.

3 Defendant no.1, though the warrant of arrest has not been executed, appeared in this Court on 6th August 2019 with his advocate Mr. Mahesh Tiwari. Mr. Tiwari informed the Court that defendant no.1 does not wish to contest the suit, is ready to submit to a decree and shall remain present in Court again on the date fixed by this Court. The matter was, therefore, stood over to today for directions.

4 Defendant nos.1 and 3 are present in Court. Since defendant no.1 is present in Court today, the non-bailable warrant issued against him stands recalled. Mr. Tiwari tenders an affidavit of defendant no.1 affirmed on 2nd August 2019, which was interpreted to him in Hindi by the Chief Translator and Interpreter of this Court today, in which defendant no.1 has categorically and unconditionally stated that he does not wish to claim any right, title, interest or possession on the suit flat. Mr. D'souza, counsel for defendant nos.2 to 4 also reiterates what defendant nos.2 to 4 had stated on 28th June 2019 that defendant nos.2 to 4 also do not wish to claim any right, title, interest or possession regarding the suit flat. Mr. Tiwari and Mr. D'souza both state that the suit be decreed in terms of prayer clauses – (a), (b) and (c) and the Court Receiver be directed to hand over possession of the suit flat to plaintiffs. Mr. Tiwari and Mr. D'souza, on instructions from

defendant no.1 and defendant no.3 unconditionally undertake to this Court that defendant nos.1 to 4 shall not interfere with the possession of the suit flat by plaintiffs, will not cause any hindrance in plaintiffs' enjoying, occupying and residing in the suit flat and also apologise to the Court for the inconvenience caused to this Court as well as plaintiffs. Statements accepted as undertakings to this Court.

5 In the circumstances, suit stands decreed in terms of prayer clauses – (a), (b) and (c) which read as under :

(a) that this Hon'ble Court be pleased to pass an order and decree directing the defendants to hand over vacant and peaceful possession of the suit flat to the plaintiffs herein.

(b) that this Hon'ble Court be pleased to pass an order and decree declaring that the agreement for sale dated 30th January 2005 is illegal, non-est and does not operate to transfer title in the suit flat to defendant no.1.

(c) that this Hon'ble Court be pleased to pass an order and decree declaring that the sale deed dated 12th June 2014 is illegal and non-est as the defendant no.1 did not have title in the suit flat which could have been transferred to Mr. Vijay Kumar Jain.

6 Drawn up decree dispensed with. Refund of court fees, if any in accordance with rules. No order as to costs.

7 The Court Receiver stands discharged without passing of accounts on plaintiffs' advocates undertaking on behalf of plaintiffs that if there are any charges payable to the Court Receiver, the same shall be paid to the Court Receiver within two weeks of receiving the communication from the Court Receiver to that effect.

8 The Court Receiver to hand over possession of the suit flat being flat no.402, B Wing, Foreshore Building, Juhu Tara Road, Near Hotel Sea Princess, Juhu, Mumbai – 400 049 to plaintiffs.

9 The Prothonotary and Senior Master, High Court, Bombay to return the bail amount of Rs.1 lakh each given by defendant nos.2, 3 and 4 within one week of receiving an application from defendant nos.2, 3 and 4/their advocates.

10 Mr. Tiwari and Mr.D'souza state that defendant nos.1, 2, 3 and 4, as plaintiff nos.1, 2, 3 and 4 had filed a suit in this Court being suit no.2445 of 2012, which is listed before another Court. Mr. Tiwari and Mr. D'souza state, to avoid confusion and loss of time, they be allowed to withdraw the suit.

11 The said suit no.2445 of 2012 is dismissed as withdrawn. Refund of court fees, if any in accordance with rules. Mr. D'souza states that the refund be given to plaintiff no.1 in that suit.

12 All interim application in both suits stand disposed. All interim orders also stand vacated.

13 Mr. Kapadia states that there is a LEC suit no.9 of 2009 filed by plaintiffs in Small Causes Court against defendants and a third party. Mr. Kapadia undertakes to withdraw that suit within two weeks from today

against defendant nos.1 to 4 in this suit. Statement accepted as an undertaking to this Court.

14 All Court Receiver's Report stand disposed.

15 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)