

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.4406 OF 2018
(M/s Sharma Construction Company, Nagpur through its Partners and
others .vs. Praveenkumar s/o Lilapat Bansal and others.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. A.S. Jaiswal, Senior Advocate with Mr. S.V. Bhutada, Advocate
 for Petitioners.

Mr. C.S. Kaptan, Senior Advocate with Mr. P.K. Mohta, Advocate for
 Respondent Nos. 1 & 2.

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CORAM : MANISH PITALE, J.
DATE OF RESERVING ORDER : APRIL 02, 2019
DATE OF PRONOUNCING ORDER : APRIL 10, 2019

By this writ petition, the petitioners have challenged the order dated 26.06.2018 passed by the Court of 4th Joint Civil Judge, Junior Division, Nagpur (Executing Court), whereby an application moved by the petitioners to intervene in execution proceedings, has been rejected. The petitioners claimed right of intervention in the execution proceedings initiated by respondent Nos. 1 and 2 (decree holders), on the basis that they had purchased the very same properties by registered sale deeds, in respect of which respondent Nos. 1 and 2 were seeking to execute decree of specific performance . According to the petitioners, they have a vital interest in the matter and the Executing Court ought to have allowed their application for intervention.

2. Respondent Nos. 1 and 2 herein had filed Special Civil Suit No. 185 of 2005 against respondent

Nos. 3 to 8 seeking specific performance of agreement dated 16.10.1998, whereby respondent nos. 3 to 8 had agreed to sell the suit properties to respondent Nos. 1 and 2. By judgment and order dated 05.01.2008, the Court of Joint Civil Judge, Senior Division, Nagpur (trial Court) decreed the suit in favour of respondent nos. 1 and 2, thereby directing respondent nos. 3 to 8 to execute sale deeds in terms of the aforesaid agreement executed between the parties. Respondent Nos. 3 to 8 filed appeal before the Court of District Judge, Nagpur (appellate Court), but by judgment and order dated 13.12.2016 appeal stood dismissed and the decree was confirmed. Second Appeal No.23 of 2017 filed by respondent Nos. 3 to 8 against the said order of the Appellate Court was also dismissed by this Court, thereby further confirming the decree and it attained finality.

3. In the meanwhile, respondent nos. 1 and 2 had initiated execution proceedings before the Executing Court bearing Regular Darkhast No. 1184 of 2012. On 03.11.2017, the petitioners moved application in the said execution proceedings bearing Exh.59 before the Executing Court, claiming that they had purchased the very same suit properties by registered sale deeds dated 02.01.2006 and 20.10.2007 and that, therefore, they were entitled to intervene in the said execution proceedings. The said application was opposed by respondent Nos. 1 and 2. By the impugned order dated 26.06.2018, the executing Court rejected the said application, holding that the said sale deeds were

executed in favour of the petitioners after the suit was filed by respondent nos. 1 and 2 and that, therefore, being purchasers pendente lite they were not entitled to intervene and raise objection in the aforesaid execution proceedings. The said order is subject matter of the present writ petition.

4. Mr. A.S. Jaiswal, learned senior counsel appearing with Mr. S.V. Bhutada, Advocate for the petitioners, contended that the Executing Court had committed a grave error in rejecting the said application filed on behalf of the petitioners because the decree passed in favour of respondent nos. 1 and 2 was collusive and it was after the property was agreed to be sold to the petitioners and further that the petitioners clearly had a right to intervene and raise objection in the execution proceedings. The learned senior counsel placed emphasis on judgment of the Hon'ble Supreme Court in the case of **Thomson Press (India) Limited .vs. Nanak Builders and Investors Private Ltd.** reported in **(2013) 5 Supreme Court Cases 397** in respect of the said contention. In fact, this Court referred to the said judgment of the Hon'ble Supreme Court, while issuing notice in the present writ petition and granting stay of further proceedings before the Executing Court. The learned senior counsel contended that the Hon'ble Supreme Court in the aforesaid judgment had clearly spelt out the principles that would govern an application for impleadment in similar circumstances and that the case of the petitioners was clearly covered under the same. It was further

submitted that while the Executing Court had placed much emphasis on the petitioners being purchasers pendente lite while applying Section 52 of the Transfer of Property Act, 1882, the Executing Court had failed to appreciate the effect of Section 19(b) of the Specific Relief Act, 1963, on the facts and circumstances of the present case. It was submitted that the petitioners were transferees of the suit property for value and that they had paid money in good faith and without notice of the agreement, specific performance of which was sought to be enforced by respondent nos. 1 and 2. It was submitted that if the approach adopted by the Executing Court was to be accepted, Section 19 (b) of the Specific Relief Act, 1963 would be rendered otiose.

5. Per contra, Mr. C.S. Kaptan, learned senior counsel appearing along with Mr. P.K. Mohta, Advocate for respondent Nos. 1 and 2, submitted that the petitioners were not entitled to intervene and object in the execution proceedings because they were admittedly purchasers pendente lite and they could not claim ignorance of the proceedings initiated by respondent nos. 1 and 2, leading to decree in their favour which had attained finality. It was submitted that reliance placed on behalf of the petitioners on the judgment of the Hon'ble Supreme Court in the case of **Thomson Press (India) Limited .vs. Nanak Builders and Investors Private Ltd.**(supra) was misplaced because the said case concerned an application moved by certain persons under Order 1 Rule 10 of the Code of Civil Procedure, 1908 during the pendency of the suit

before the trial Court, while the present case concerned execution proceedings after decree passed in favour of respondent nos. 1 and 2 had attained finality. The learned senior counsel appearing for respondent nos. 1 and 2 relied upon judgments of the Hon'ble Supreme Court in the case of **Usha Sinha .vs. Dina Ram and others** reported in **(2008) 7 Supreme Court Cases 144** and **Silverline Forum Pvt. Ltd. .vs. Rajiv Trust and another** reported in **(1998) 3 Supreme Court Cases 723**, as also judgment of this Court in the case of **Vithabai Sayanna Battin and ors. .vs. Daljitsingh Dilipsingh Ramgadiya and another** - judgment and order dated 13.10.2010 in **Second Appeal No. 438 of 2010**, to emphasize that under Order 21 Rule 98 (Bombay Amendment) of the CPC, the petitioners had no right to claim that they ought to be permitted to intervene in execution proceedings, because the sale deeds executed in their favour were admittedly after the suit for specific performance was filed by respondent nos. 1 and 2. On this basis, the learned senior counsel sought dismissal of the writ petition.

6. Before examining the position of law as canvassed by the rival parties, it would be necessary to first refer to certain dates and events in the present case. The documents in the present case show that in February 2005, suit was filed by respondent nos. 1 and 2 against respondent nos. 3 to 8 for specific performance of an agreement dated 16.10.1998. The written statement of respondent nos. 3 to 8 was filed before the trial Court on 21.04.2005. The registered sale deeds

executed in favour of the petitioners in respect of the suit property are dated 02.01.2006 and 20.10.2007. Therefore, it is undisputed that the two sale deeds executed in favour of the petitioners were after the suit for specific performance was filed by respondent Nos. 1 and 2 against respondent Nos. 3 to 8, in respect of the very same property. It is not as if the said sale deeds were never brought to the notice of any Court during the proceedings leading to the decree in favour of respondent nos.1 and 2 and the said decree attained finality. It is noted in the impugned order by the Executing Court that the said two sale deeds were placed before the trial Court and marked as Exhs. 80 and 81. The trial Court took the said sale deeds into consideration and observed in paragraph nos. 24 and 25 as follows:-

"24. At this stage it is argued by the learned counsel for defendants that the defendants have already alienated the properties to M/s Sharma Construction Co. The certified copy of the sale-deeds are produced at Exhs. 80 and 81. Now the defendants are no more the legal owners of the suit property. And, therefore, the specific performance of contract cannot be enforced at all.

25. It is pertinent to note that during the pendency of this suit, the defendants alienated the suit property in the year 2006-2007. Therefore, their defence is not at all bonafide. On the contrary, in order to defraud the plaintiffs from getting relief of specific performance of contract, intentionally the defendants seems to have alienated the property during the pendency of suit. And, therefore, the transactions entered into by

defendants during the pendency of this suit are hit by principle of lis-pendence U/s 52 of the Transfer of Property Act. And, therefore, those transactions are definite subject to decision of this suit. These transactions are not binding on the plaintiffs. Rather the subsequent purchaser of the properties are also bound by the decision of this suit. The plaintiffs can enforce their relief of specific performance of contract against defendants as well as against the subsequent purchasers of the suit property from defendants equally. This judgment and decree is binding on defendants as well as their successors-in-title. Here it is worth to mention that before alienating the properties, defendants never intimated this Court. They never sought any permission from this Court to alienate the property during the pendency of the suit. They were fully aware about the pending of this suit. In such set of facts the contention of defendants' counsel in this respect is not acceptable or sustainable."

7. Thus, the said two sale deeds executed subsequent to filing of the suit by respondent nos. 1 and 2, were noticed by the trial Court and it was specifically held that the said transactions were hit by the principle of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. The said judgment and order passed by the trial Court stood confirmed and the decree passed in favour of respondent nos. 1 and 2 attained finality. The events clearly show that the decree was passed and later confirmed after contest between the respondent nos. 1 and 2 on the one hand and respondent nos. 3 to 8 on the other. Therefore,

there is no substance in the contention raised on behalf of the petitioners that the decree was collusive.

8. Hence, the question that arises for consideration is, when the aforesaid sale deeds came into existence during the pendency of the suit filed by respondent nos. 1 and 2 and they were hit by Section 52 of the Transfer of Property Act, 1882, whether the petitioners could be permitted to intervene and object in execution proceedings initiated by respondent nos. 1 and 2 in respect of the said decree that had attained finality. The facts of the present case, clearly show that reliance placed on the judgment of the Hon'ble Supreme Court in the case of **Thomson Press (India) Limited .vs. Nanak Builders and Investors Private Ltd.** (supra) is misplaced. The said case was not concerned with the right of purchasers like the petitioners during the pendency of a suit to claim intervention and right to raise objection in execution proceedings. The said case was concerned only with the question of addition of parties under Order 1 Rule 10 of the CPC.

9. In the judgments in the cases of **Usha Sinha .vs. Dina Ram** (supra) and **Silverline Forum Pvt. Ltd. .vs. Rajiv Trust** (supra) of the Hon'ble Supreme Court, the effect of Rule 102 of Order 21 of the CPC was considered and it was emphatically laid down that purchasers like the petitioners in the present case, who purchased property during the pendency of a suit, had no independent right to the property and

consequently they had no right to resist or obstruct execution of a decree passed in respect of such property. It was laid down that such purchasers were presumed to be aware of pending litigation in a competent Court and, therefore, they could not be said to be purchasers without notice. The relevant portion of the judgment of the Hon'ble Supreme Court in the case of **Usha Sinha .vs. Dina Ram** (supra) after relying upon earlier judgment in the case of **Silverline Forum Pvt. Ltd. .vs. Rajiv Trust** (supra) reads as follows:-

“25. We are in respectful agreement with the proposition of law laid down by this Court in Silverline Forum. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

26. For invoking Rule 102, it is enough for the decree holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order XXI.

27. So far as the present case is concerned, the facts are no more in dispute. As already noted earlier, Title Suit No. 140 of 1999 was instituted by the respondent-plaintiff on April 10, 1999. Thus, the litigation was pending in respect of the property and the matter was sub-judice. The appellant thereafter purchased the property from original defendant Nos. 4 and 5 by a registered sale deed on February 15, 2000 i.e. during the pendency of the suit. It is also not in dispute that ex-parte decree came to be passed against the defendants on May 24, 2001. In the situation, in our considered opinion, the doctrine of *lis pendens* would apply to the transaction in question, and the High Court was wholly right in holding that the case was covered by Rule 102 of Order XXI of the Code. The appellant could not seek protection of pendency of suit instituted by her. The Executing Court was not justified in granting stay of execution proceedings. The High Court was, hence, right in setting aside the order of the Executing Court.

28. Rule 29 of Order XXI of the Code deals with cases wherein a suit has been instituted by the judgment-debtor against the decree- holder and has no relevance to cases of *lis pendens* wherein transfer of property has been effected by the judgment debtor to a third party during the pendency of proceedings.

29. The High Court, in our opinion, rightly held that the appellant could not be said to be a 'stranger' to the suit inasmuch as she was claiming right, title and interest through defendant Nos. 4 and 5 against whom the suit was pending. She must, therefore, be presumed to be aware of

the litigation which was before a competent Court in the form of Title Suit No. 140 of 1999 instituted by the present respondent against the predecessor of the appellant.”

10. It is relevant that insofar as Rule 102 of Order 21 of the CPC is concerned, by Bombay Amendment the same has been deleted but by the very same amendment, sub-rule (2) was added to Rule 98 of Order 21 of the CPC. This aspect was considered in judgment of this Court in the case of **Vithabai Sayanna Battin .vs. Daljitsingh Dilipsingh Ramgadiya** (supra) and it was laid down that even if Rule 102 of Order 21 of the CPC was deleted by the Bombay amendment, the very same amendment added sub-rule (2) to Rule 98 of Order 21 of the CPC and a proviso to Rule 100 of Order 21 thereof, which emphasize upon the fact that a transferee of property during the pendency of a suit shall not have any independent right and that the decree holder shall be put in possession of the property.

11. The learned senior counsel appearing for the petitioners was not justified in contending that even if it was to be held that there was a presumption against the petitioners about being aware of the litigation initiated by respondent nos. 1 and 2 before a competent Court, such a presumption was rebuttable and that if the view taken by the Executing Court was accepted, Section 19(b) of the Specific Relief Act, 1963 would be rendered otiose. A proper reading of the judgments of the Hon'ble Supreme Court in the case of **Usha**

Sinha .vs. Dina Ram (supra) and **Silverline Forum Pvt. Ltd. .vs. Rajit Trust** (supra) would show that a presumption referred to therein is not a presumption in the sense of it being rebuttable, but a situation where a transferee who purchases property during the pendency of the suit, is deemed to be aware of a litigation pertaining to the said property pending before the competent Court. Such a transferee , cannot claim a right to show evidence that he was actually not aware or put to notice about pendency of such a litigation. In fact, Rules 98 and 100 of Order 21 as amended by the Bombay Amendment, addressed this very mischief that can be indulged in by transferees pendente lite. Therefore, the petitioners cannot claim that they had a right at least to place on record evidence to show that they were actually not aware about the pendency of the litigation, even if they had purchased the property during the pendency of the suit filed by respondent nos. 1 and 2 or that there was a rebuttal presumption that arose in the present matter. Similarly, the petitioners are not entitled to claim that Section 19(b) of the Specific Relief Act, 1963 would be rendered otiose, because they cannot be said to be transferees who paid money in good faith and without notice of the original contract, because they were deemed to be aware of the same as they had purchased the property during the pendency of the suit filed by respondent nos. 1 and 2. Therefore, there is no substance in the contentions raised on behalf of the petitioners.

12. Another aspect brought to the notice of this

Court by the learned senior counsel appearing for respondent nos. 1 and 2 was that the petitioners have filed Special Civil Suit No. 874 of 2017 before the Court of Civil Judge, Senior Division, Nagpur, being a suit for declaration, permanent injunction and damages on the basis of the very same sale deeds referred above. This shows that the petitioners have already chosen a remedy and they are pursuing the same, which will be decided in accordance with the law.

13. In view of the above, this Court finds that there is no merit in the present writ petition and accordingly it is dismissed.

JUDGE

Upon pronouncement of order, the learned counsel for the petitioners made a request for continuing the interim relief for further period of four weeks. For the reasons stated in the judgment dismissing the writ petition, this Court is of the opinion that the interim relief does not deserve to be continued. Hence the request is rejected.

JUDGE

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