

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

WRIT PETITION NO. 12960 OF 2019

Devan S. Ghatalia ...Petitioner
vs.
Nanak S. Ghatalia and anr. ...Respondents.

Mr. Jamsheed Master i/by M.J. Kalyaniwalla for the petitioner.
Mr. Nanak S. Ghatalia - Respondent No.1 in person.

WITH
WRIT PETITION NO.12959 OF 2019

Swati S. Ghatalia ...Petitioner
vs.
Nanak S. Ghatalia and anr. ...Respondents.

Mr. Atul Daga with Yatin Shah and S. Kanojiya for the petitioner.
Mr. Nanak S. Ghatalia - Respondent No.1 in person.
Mr. Jamsheed Master i/by M.J. Kalyaniwalla for Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 10th January, 2020

PC:

1. Heard learned counsel for the petitioners and the respondent No.1 who appears in person in both the aforesaid petitions.
2. By these petitions, the petitioners have impugned the order dated 25.9.2019 passed by the learned City Civil Court, Mumbai below Exhibit 1 i.e. Execution Application No.297 of 2014 in disposed of Suit No.1980 of 2011.
3. Perused the papers as well as impugned order.

4. The petitioners in the aforesaid petitions and respondent No.1 are brothers and sister. It appears that respondent No.1 had filed a suit No.1980 of 2011 for perpetual injunction against the petitioners for restraining them from inducting third party or creating third party right in the suit residential premises. In the said suit, the parties i.e. petitioners and respondent No.1 entered into consent terms and filed an undertaking which is at Page 51 of Writ Petition No. 12960 of 2019. Pursuant to the said consent terms entered into between the parties on 21.4.2012, the consent decree was passed in Suit No.1980 of 2011. Pursuant to the said consent terms and the consent decree, the respondent No.1 filed an execution application in the City Civil Court, Greater Bombay being Execution Application No.297 of 2014 and sought appointment of court authority for sale of the suit flats i.e. Flat Nos. 21 and 22 mentioned in the consent terms. Pursuant thereto, the learned City Civil Judge passed the impugned order dated 25.9.2019. The said order reads as under:-

“1. Registrar of City Civil Court is directed to appoint the officer of the Court for the sale of flats referred in execution petition and he is further directed to deposit sale proceeds of the flats in bank account of S. V. Ghatalia and bank account of S. V. Ghatalia HUF.

2. Registrar is directed to issue public notice for sale of the flats in question and should accept the tenders and should conduct the sale of flats in question at the highest price offered in such tenders.

3. *Plaintiff in person, Defendant No.1 in person and advocate for Defendant No.2 submitted that parties to the execution proceedings may be permitted to submit tenders for purchasing suit flats, however, it is made clear that Registrar should sale the suit flats at the highest price of each flat by reserving the rights of flats referred in execution petition to Rs.15.00 Crores (i.e. Rs.7.50 Crores for flat No.21 and Rs.7.50 Crores for flat No.22.)*
4. *Registrar is directed to hand over vacant possession of suit flats in question to the purchaser who will pay the highest price of flats in question.*
5. *Record and proceeding be sent to Registrar for further steps and for compliance.”*

5. Learned counsel for the petitioners submitted that the only undertaking given is that the petitioners will not create any third party rights in the suit property and that they had not agreed for sale of the suit flats. The said argument cannot be sustained and is rejected, inasmuch as, a perusal of the consent terms clearly shows that the petitioners had undertaken not to create third party interest and continue to stay/reside in the suit premises till the sale of the said suit premises i.e. flat Nos. 21 and 22. Hence, no infirmity can be found in the impugned order appointing an Officer of the Court for sale of the said flats referred in the execution petition. As far as Clause 1 of the impugned order which directs sale proceeds of the flats to be deposited in

the bank account of S.V. Ghatalia and bank account of HUF is concerned, the same is required to be modified. Accordingly, the sale proceeds of the flats which will be received on sale of the flats referred to in the execution application shall be deposited by the officer in the registry of the City Civil Court, Mumbai. Expenses/taxes if any, if required to be paid from the said sale proceeds by the Officer of the court. The said amount received from the sale of the said flats to be kept in fixed deposit in State Bank of India till appropriate orders are passed by the Executing Court. If an application is filed by any of the parties for withdrawal of their shares from the sale proceeds received, it is always open for the learned Judge to decide the same on its own merits in accordance with law, after hearing all the parties. Accordingly, the impugned order dated 25.9.2019 is confirmed with the aforesaid modification in Clause 1 of the impugned order only with respect to deposit of the sale proceeds.

6. At this stage, the learned counsel for the petitioners pray for expediting the Suit No.2222 of 2017 which is pending in the City Civil Court, Mumbai. Accordingly, the hearing of the said suit is expedited.

7. Both the petitions are disposed off on the aforesaid terms.

8. All the concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.