

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9983 OF 2018

Laxman Deorao Misal and Another ..PETITIONERS

VERSUS

Vishwanath Kisanrao Gupte ..RESPONDENT

WITH CIVIL APPLICATION NO. 6328 OF 2020

....
Mr. S.S. Thombre, Advocate for petitioners

Mr. S.R. Patil, Advocate for respondent

....

CORAM : R.G. AVACHAT, J.
RESERVED ON : 19th JANUARY, 2021
PRONOUNCED ON : 30th JANUARY, 2021

ORDER :

1. The challenge in this writ petition is to the order dated 22nd April, 2012 passed in Mega Lok Adalat in Regular Civil Suit No. 286 of 2012. By the impugned order, the suit came to be decreed in terms of compromise dated 27th March, 2012.

2. Few facts necessary to decide the present writ petition are as follows :-

The petitioners claim to be owners and possessors of Plot No. 24, admeasuring 2400 sq. fts. situated at Jawahar Nagar, Beed. The said property was originally owned by Mr. Rajendra and Rahul Bansode. While the petitioners purchased said property, construction of an apartment was under

progress thereon. The respondent is in the business of development and construction. A development agreement dated 15th March, 2012 came to be executed between the petitioners and the respondent for development of Plot No.24.

3. The petitioners filed a suit, being Regular Civil Suit No. 286 of 2012 on 27th March, 2012 against the respondent. On the same day the suit was shown to have been compromised between the parties to the suit. The said compromise memo was placed in the Mega Lok Adalat held on 22nd April, 2012. The Lok Adalat endorsed the same. Thus, award-cum-compromise decree came to be passed.

4. Mr. Thombre, learned counsel for the petitioners, would submit that a fraud has been practiced on the Court and the petitioners as well. The petitioners never ever appeared in the suit, R.C.S. No. 286 of 2012 before the trial Court. The respondent had obtained signatures of the petitioners on the blank paper. The said paper has been misused to bring into existence the compromise memo. Learned counsel would further submit that when the development agreement was executed on 15th March, 2012, there could not be any differences between the petitioners and the respondent within a period of ten days. The suit was filed on twelfth day of execution of the development agreement. The suit was compromised on the same day. The petitioners have also preferred a complaint against the advocates involved in

the matter, to the Bar Council of Maharashtra. Learned counsel would further submit that the provisions of Legal Services Authorities Act, 1987 ('the Act of 1987') and rules and regulations framed thereunder mandate presence of parties before the Lok Adalat. The Presiding Officers of the Lok Adalat are under obligation to interact with the parties so as to verify terms of compromise arrived at. Admittedly, the petitioners were not present before the Lok Adalat on the given day. As such, the award passed by the Lok Adalat is not an award in the eyes of law and thus unexecutable. Learned counsel, therefore, urged for allowing the petition in terms of prayer clause (B).

5. Learned counsel for the respondent would, on the other hand, submit that the petitioners have practiced fraud on this Court. The petitioners have, in no uncertain terms, admitted the compromise decree passed in R.C.S. No. 286 of 2012. The decree was put to execution. Thereafter again an agreement came to be executed between the petitioners and the respondent. The petitioners have received hefty amount from the respondent. Learned counsel took me through the relevant documents on record to point out the petitioners to have admitted execution of the compromise decree.

6. I have considered the submissions made by the respective parties. Perused the documents on record. In my view, the petitioners have not been fair in the matter. Admittedly, development agreement came to be executed between the parties on 15th March, 2012. Learned counsel for the petitioners

may, therefore, be justified to submit that there was no possibility of a dispute being arose within ten days of execution of development agreement. The suit was filed on 27th March, 2012. Same was compromised on the very day. Copy of roznama in the suit has been placed on record. The petitioners admit their signatures on the compromise memo. According to them, their signatures were obtained on a blank paper. The roznama records that Advocate B.B. More filed the suit. The petitioners appeared in the suit through Advocate Shirsath. A compromise pursis (Exh.10) was placed before the Court. The Court verified the terms of compromise and passed following order :-

“Parties are present with their advocate and admits the contents in compromise hence verified.”

7. It need to be mentioned that factual observations in judgment and order are presumed to be correct. True, the trial Court did not pass the decree in terms of compromise on the very day. The compromise pursis was placed before the Lok Adalat. The Lok Adalat passed following order on compromise pursis (Exh.10) :-

“In view of compromise pursis Exh.10, suit is disposed of in Maha Lok Adalat. Entire court fees be refunded.”

8. The main question is whether really the petitioners had not appeared before the trial Court on 27th March, 2012 when the Court verified

the terms of compromise. It is best known to the parties to the suit as to why the suit was filed and compromise was entered into same day. The terms of compromise are nothing but replica of the development agreement.

9. The facts indicate that something went wrong with the parties to the suit. The respondent put the compromise decree/award to execution on 12th October, 2015. It is Regular Darkhast (Execution Proceeding) No. 99 of 2015. On 14th December, 2015 the petitioners appeared in the execution proceeding and filed their say (Exh.15). For ready reference, some of the matter in the said Exhibit 15 needs to be reproduced as below :-

“1. That, the execution petition filed by the decree holder is not tenable as the impugned compromise is not the decree. If the Hon’ble Court perused the order passed below exhibit 1 in R.C.S. No. 286/2012 the suit is disposed-off in view of compromise pursis filed by the parties at Exh.10. The Hon’ble Court has not decreed the suit of plaintiff in terms of compromise and therefore the said order is not said to be ‘decree’.

2. That, as per the terms and conditions of said compromise it reveals that, the decree holder alleged to be put in possession of suit property and therefore as per section 17(1)(a), 17(2)(vi) of Registration Act the said document should be compulsorily registered. In the case at hand the said compromise occurred between the parties is not registered under the provisions of Registration Act and therefore the decree holder cannot rely upon the said compromise deed, as it is not admissible in evidence for want of insufficient stamp duty.

3. *That, as per the terms and conditions of the said compromise, upon failure of judgment debtors to perform their part of contract, decree holder has to file suit for specific performance of contract instead of filing such execution petition.*

4. *That, the decree holder very wisely trying to avoid to pay the requisite court fees for filing suit for specific performance of contract. As per the terms and conditions of the compromise took place between the parties there are some reciprocal conditions, which has not been followed/fulfilled by the decree holder, therefore he is not entitled to execute the decree as prayed.”*

10. The aforesaid matter would go long way to suggest the petitioners to have admitted execution of a compromise pursis before the trial Court. This was the first opportunity for the petitioners to come with a case that their signatures were obtained on the blank paper and the same was used to bring into existence the compromise pursis. The matter doesn't rest at that. The petitioners moved application (Exh.18) in execution proceeding before the trial Court. Some portion thereof reads thus :-

“2. *That, after filing of suit compromise took place between D.H. and J.D. in respect of above agreement. The terms and conditions of the said compromise are mentioned in said compromise pursis filed at exhibit 10. In view of said compromise pursis suit bearing R.C.S. No.286/2012 is disposed off by the then C.J.J.D., Beed.*

3. *That, thereupon, the D.H. filed present execution petition against the J.D. by relying upon, compromise pursis*

arrived between parties at exhibit 10 in R.C.S. No. 286/2012.

4. That, J.D. appears and filed their say and raised their objection in respect of admissibility of said compromise on account of insufficient stamp duty. It is the contention of J.D. that the compromise took place between the parties is also development agreement. If the Hon'ble Court perused the terms and conditions of said compromise it reveals that D.H. alleged that he is kept in possession of suit property on basis of said compromise.”

The petitioners, vide application (Exh.18), had urged the executing Court to impound the compromise decree for want of registration and direct the respondents to pay requisite stamp duty and court fees thereon.

11. As the relation between the petitioners and the respondent turned unfriendly, the respondent filed a criminal case against the petitioners. It was F.I.R., C.R. No. 137 of 2016. The petitioners filed Criminal Writ Petition No. 776 of 2016 for quashing of said F.I.R. and setting aside order dated 14th June, 2016 passed by Additional Sessions Judge-1, Beed in Revision Petition No. 18 of 2016. Copy of the said writ petition is on record. The averments/pleadings in the said writ petition are reproduced below for ready reference :-

“7. The petitioners state that, there was a development agreement between the petitioners no.1 and 2 on one hand and the respondent no.2 on other hand, the said agreement came to be executed on 15.03.2012, thereafter, some dispute arose between the parties and as a result, the respondent no.2 filed R.C.S. No.

286/2012 against the petitioner nos. 1 and 2. The petitioner nos. 1 and 2 and the respondent no.2 entered into compromise and on the basis of compromise, the said suit came to be disposed off on 22.04.2012. Copies of the development agreement along with the R.C.S. No. 286/2012 and order thereon dated 22.04.2012 are annexed herewith and marked as Exhibit "E" Collectively.

8. The petitioners state that, thereafter, again the development agreement came to be executed on 18.04.2013 between the respondent no.2 and the petitioner nos. 1 and 2. Copy of the development agreement dated 18.04.2013 is annexed herewith and marked as Exhibit "F".

9. The petitioners state that, the respondent no.2 has also filed execution proceedings bearing R.D. No.99/2015 before the learned Civil Judge Senior Division, Beed for execution of the compromise decree in R.C.S. No.286/2012 and the same is pending. Copy of the R.D. No.99/2015 and notices issued therein are annexed herewith and marked as Exhibit "G".

GROUND

I. ...

II. It ought to have been considered that, in fact, the dispute between the parties is civil in nature and therefore, the regular civil suit was filed by the respondent no.2 and that has been compromised and therefore, now the respondent no.2 has also filed the Regular Darkhast for executing the compromise decree and therefore, it is a civil dispute and no criminal offence is made out against the petitioners;"

12. In the aforesaid pleadings, the petitioners admit institution of suit, their appearance before the trial Court, presenting the compromise pursis and

the same having been converted into the compromise decree. The petitioners also admit execution of development agreement dated 18th April, 2013. The petitioners also filed Writ Petition No. 8976 of 2016 for challenging order dated 19th April, 2016 passed below Exhibit 18 in the execution proceedings. Copy of the said writ petition is on record. Paragraph No.3 thereof reads thus :-

“3. The petitioners state that, the parties to the suit have arrived at compromise and accordingly, the compromise deed was prepared and filed before the learned Trial Court on 27.03.2012 and therefore, pursuant to the compromise deed filed on record, the suit came to be decreed in view of the said compromise deed. Copies of the compromise deed and the relevant page of Roznama are annexed herewith and marked as Exhibit “B” Collectively.”

13. The aforesaid pleading submitted by the petitioners before the executing Court and two writ petitions filed before this Court undoubtedly indicate the petitioners to have admitted to have had appeared before the trial Court and furnished the compromise pursis. The petitioners allowed the suit to be decreed in terms of compromise. The case propounded in this petition is nothing but afterthought. Coming with a case to have never appeared before the trial Court and the respondent by practicing fraud on the trial Court and the petitioners as well obtained a compromise decree, would nothing but an attempt to practice a fraud on this Court by submitting a false case with a view to obtain an order.

14. It is true that the petitioners were not present before the Lok Adalat. The compromise pursis, verified by the trial Court, was placed before the Lok Adalat. The advocates for the parties were very much present when the compromise came to be entered. In the given peculiar facts and circumstances of the case, the petitioners cannot be allowed to turn around to say that the compromise decree passed in R.C.S. No.286 of 2012 is non est for want of their presence before the Lok Adalat. The petitioners cannot be benefited by relying on the judgment of this Court in the case of ***United India Insurance Co. Ltd. Vs. Shaikh Akbar Najir and Another*** passed in ***Writ Petition No. 9521 of 2014***. The facts of said case would indicate that officer of the insurance company could not appear before the Lok Adalat, as his near and dear had passed away. The advocate appearing for the insurance company had not been authorized to enter into a compromise. Still he entered into a compromise for settlement of matter before the Lok Adalat. Division Bench of this Court, therefore, set aside the award passed in Lok Adalat.

15. Each case has to be decided on it's own facts. At the cost of repetition it is stated that the petitioners appeared before the trial Court. The petitioners and the respondent submitted a compromise pursis. The trial Court verified the compromise. The compromise pursis was placed before the Lok Adalat. Advocates for the parties were present. The Lok Adalat endorsed the compromise. In subsequent proceeding viz. regular darkhast, the

application preferred by the petitioners therein, and aforesaid two writ petitions filed on their behalf, the petitioners unequivocally admitted passing of a compromise decree in terms of compromise petition submitted by them and the respondent. Their only grievance was regarding the decree having not been entered on the stamp paper and no requisite court fees having been paid.

16. In my view, the petitioners have filed false affidavits before this Court. They even become liable for prosecution as regards offence against administration of justice. I, however do not propose to initiate action against the petitioners under Section 340 of the Code of Criminal Procedure.

17. For the reasons stated herein above, there is no merit in the writ petition. It is a case for imposition of exemplary cost. I, however restrain myself from saddling the petitioners with hefty cost. Since the petition is sans of merit, same is dismissed with cost of Rs.25,000/- (Rupees Twenty Five Thousand). The petitioners to deposit the cost within a period of four weeks. The amount of costs be paid to District Covid Hospital (GHATI), Aurangabad.

18. In view of dismissal of writ petition, nothing remains in civil application. Same stands disposed of accordingly.

(R.G. AVACHAT, J.)