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

CRIMINAL WRIT PETITION NO. 448 OF 2019

1. Jairaj Namdeorao Bhimte
   Aged 60 years, Occu. Retired,
   R/o Vakilpeth, Hajare Wadi, Nagpur
   Retired as Sr. Clerk, District Court,
   Nagpur
2. Sanjay Baburaoji Channe
   Aged 55 years, Occu. : Service
   R/o Flat No. 5, Anusagar Apartment,
   Shivshakti Nagar, Nagpur
   Working as Asstt. Superintendent, in the
   Court of C.J.J.D. & J.M.F.C. Court No. 7,
   Nagpur
3. Sau. Jyoti Sanjay Kodape
   Aged 54 years, Occu : Service
   R/o 44 Janki Nagar, Nagpur
   Working as Sr. Clerk in the Court of
   C.J.S.D. Nagpur

.. **PETITIONERS**

Versus

1. State of Maharashtra through its Police Station Officer, Sadar, Tah. & Dist. Nagpur

2. Narendra Kothiramji Bawane
   Aged 55 years, Occu : Registrar
   c/o District and Sessions Court, 7th Floor, Nyay Mandir Building, Nagpur

3. State Information Commissioner,
   Nagpur Division, Civil Lines, Nagpur

4. Mohammad Adil Rayeen
   Aged Major, Occu : Not known
   R/o Plot No. 32, Surya Nagar, Kalamna Market Road, Nagpur

.. **RESPONDENTS**

5. Shaheda Begam W/o Mohd. Aslam, Aged 63 years, Occ. Agriculturist, R/o N-32, Surya Nagar, Kalamna Road, Nagpur
6. Prakash Shantilal Kataria Aged 55 years, Occupation Business, R/o Shantinath Appts., Hiwari Nagar, Nagpur
7. Smt. Paras Subhash Jain Aged 60 years, Occupation : Business, R/o Supershwa, East Wardhaman Nagar, Nagpur
8. Ravi Subhash Jain Aged 40 years, Occupation : Business, R/o Supershwa, East Wardhaman Nagar, Nagpur

RESPONDENTS

Mr. Shraddhanand Bhutada, Advocate for petitioner No.1
Mr. Anil S. Mardikar, Senior Advocate for the petitioner No.2
Mr. S.P. Dharmadhikari, Sr. Advocate with Mr. Rohan Malviya, Advocate for the petitioner No.3
Mr. S.M. Ghodeswar, A.P.P. for respondents No.1 to 3
Mr. Harish Dangre, Advocate for the respondent No.4
Mr. Ashish Chawre, Advocate for the respondent No.5
Mr. S.V. Manohar, Senior Advocate with Mr. Vijay Bramhe, Advocate for the Intervenors

CORAM: V.M. DESHPANDE, & AMIT B. BORKAR, JJ.

DATE : SEPTEMBER 21, 2021

JUDGMENT : (Per : Amit B. Borkar, J.)

"Absence of evidence is the evidence of absence"

This is what judgment debtor wants this court to believe to achieve his goal to frustrate execution of decree. The endeavor of judgment debtor, is to frustrate execution proceedings of a decree of specific performance, which has been confirmed up to the Supreme Court by making ingenious attempt to drag the employees of the Court. This is yet another case, which confirms the general feeling that the real trouble starts after obtaining a decree and when it is put to execution. The Courts in this country have taken judicial notice of the tendency of the judgment debtors that far too many obstacles are placed in the way of decree holder, who seeks to execute his decree against the property of judgment debtor. The Privy Council in **General Manager of the Raj Durbhungah V. Vs. Maharaja Coomar Ramaput Singh (1871-72) 14 MIA 605,** had observed that the difficulties of a litigant in India begin when he has obtained a decree. This was reiterated in 1925, by the Privy Council in **Kuer Jang Bahadur Vs. Bank of Upper India Ltd. AIR 1925 Oudh 448 (PC),** where the Court observed that "Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights".

2. The facts relevant for the adjudication of the present Petition in nutshell are as under :

The respondents No. 6 to 8 are the decree holders, who had filed Special Civil Suits No.670/2003, 671/2003 and 672/2003, which were identical in nature and were decided by the same Court. On 30/01/2008 all three suits were decreed and respondents No.6 to 8 were directed to deposit balance amount of consideration within two months from the date of the decree and on their failure the suits were liable to be treated as dismissed. It is not in dispute that the decree passed in the said suits was conditional on payment of remaining consideration within two months from the date of the decree. The period of two months expired on 30/03/2008. As per the case of the respondents No.6 to 8 they approached the trial Court on 10/4/2008 with demand draft of balance consideration along with application for extension of time to deposit balance consideration. It is the case of the respondents No.6 to 8 that on 10/04/2008, the then Presiding Officer, who had passed the decree for specific performance observed that such application cannot be entertained in suit and the respondents No.6 to 8 will have to file separate Misc. Judicial Cases under Section 148 of the Code of Criminal Procedure for extension of time to deposit balance consideration. However, it is the case of respondents No.6 to 8 that since the demand drafts of balance consideration were ready, the learned Presiding Officer passed orders permitting respondents No. 6 to 8 to deposit balance consideration and directed Nazir to accept the said payment. Accordingly, such applications were handed over to the respondents No.6 to 8, which were taken to Nazir Section, where the demand drafts were deposited and it was informed that the receipts will be issued after payment is credited to the account of the Court.

3. It is the case of the respondents No.6 to 8 that the respondents on 16/4/2008 filed Misc. Judicial Applications No. 179/2008, 180/2008 and 181/2008, seeking extension of time

of 10 days to deposit the amount. The learned Presiding Officer issued notice to the judgment debtor i.e. the predecessor-in-title of respondent No.4 herein. The predecessor of respondent No.4 moved application seeking permission to cross-examine respondents No.6 to 8. Learned Presiding Officer permitted the predecessor of respondent No.4 to cross-examine the respondents No.6 to 8 in detail. The learned Presiding Officer allowed Misc. Judicial Applications No. 179/2008, 180/2008 and 181/2008 by order dated 28/01/2009 on merit, granting extension of time to deposit balance consideration by observing that the respondents No.6 to 8 have already deposited balance consideration amount on 10/04/2008. It is undisputed that the order dated 28/01/2009 permitting the respondents No.6 to 8 has attained finality as the said order has not been challenged by either predecessor-in-title of respondent No.4 or respondent No.4 himself. The decree passed in Civil Suit dated 30/01/2008 has also attained finality up to the Supreme Court.

4. In the meantime, the respondent No.4 expired in the year 2013. The respondent No.6 filed Execution Application

SD No.10/2018 and the respondent No.8 filed Execution Application SD No.9/2018. The respondent No.4 (Legal Representative of judgment debtor) appeared in the said execution proceedings in pursuance of notice issued by the Executing Court. It is the case of respondent No.4 in the affidavit-in-reply filed before this Court that the respondent No.4 noted statements about payment of balance consideration , which raised curiosity and question mark as the said amount was deposited after expiry of period of two months. It is the case of the respondent No.4 therefore, he filed an application under the provisions of the Right to Information Act, 2005, seeking specific information about the permission / order of payment of respective balance amount of consideration deposited in pursuance of decrees passed in the aforesaid suits. Since the respondent No.4 was not was satisfied with the reply of the Information Officer, he filed an appeal before the First Appellate Authority. The First Appellate Authority remanded the matter back to the Registrar cum Public Information Officer with a direction to verify the record and supply the information sought by the respondent No.4. In pursuance of the order of the First Appellate Authority, the Registrar cum Public Information Officer communicated to respondent No.4 that he could not find an application and order passed on application to deposit balance consideration and sought report from present petitioners and other persons. As the respondent No.4 was not satisfied with the communication from the First Information Officer, the respondent No.4 filed appeal before the State Information Commission vide Appeal No.2485/2018. The State Information Commission by order dated 04/10/2018 directed the Registrar cum Public Information Officer to trace the record sought by the respondent No.4 and if such information cannot be made available, to submit affidavit to that effect and lodge First Information Report.

5. It appears that in pursuance to the order dated 04/10/2018, passed by the State Information Commissioner, the Registrar cum Public Information Officer searched the application seeking permission to deposit balance consideration and order passed thereon, but, he could not find either the application or the order passed thereon.

6. The petitioners submitted their explanation to the First Information Officer and consequently the First Information Report bearing No.71/2019 dated 22/02/2019 for offence punishable under Section 9 of the Maharashtra Public Records Act, 2005 was registered against the present petitioners.

7. The petitioners have challenged registration of First Information Report by way of present petition. This Court on 07/06/2019, issued notice to respondents and in the meantime directed the respondent No.1 not to take coercive steps against petitioners until further orders and also not to file charge-sheet against petitioners. This Court on 22/02/2021 noted submissions on behalf of the petitioners and respondent No.4 and issued Rule. This Court by the said order directed the Principal District and Sessions Judge, Nagpur to submit his detailed report. The learned Principal District and Sessions Judge, Nagpur by a letter dated 03/03/2021, submitted its report stating that balance consideration was accepted by the Nazir without order of the Court.

8. It appears that by noticing order dated 22/02/2021 the respondents No.6 to 8 (Decree Holders) filed Application No.85/2021, seeking permission to intervene in the matter, which was allowed by this Court on 17/08/2021.

9. We have heard Mr. Shradhnand Bhutada, learned Advocate for the petitioner No.1, Mr. Anil Mardikar, learned Senior Advocate, Advocate for the petitioner No.2 and Mr. Subodh Dharmadhikar, learned Senior Advocate along with Mr. Rohan Malviya, Advocate for petitioner No.3, Mr. S.M. Ghodeswar, learned APP for the respondents No.1 to 3 / State, Mr. Harish Dangre, learned Advocate for the respondent No.4, Mr. Ashish Chawre, learned Advocate for the respondent No.5 and Mr. Sunil Manohar, learned Senior Advocate along with Mr. Vijay Brahme, learned Advocate for the respondents No.6 to 8.

10. Mr. Bhutada, learned Advocate for the petitioner No.1 (Nazir at the relevant time) invited our attention to the communication dated 12/07/2018, by which it was

communicated to the First Information Officer by the Incharge Superintendent that the applications to accept the amount and orders passed thereon are not kept in the Nazir Section and are returned back to the concerned Court after the order is complied with. He submitted that he is already superannuated on 13/03/2017. He submitted that since the application seeking permission to deposit the amount had been returned back after the amount was deposited, he is unnecessarily dragged in the dispute between the judgment debtor and decree holders. He submitted that the State Information Commissioner has no power to direct the First Information Officer to lodge First Information Report against the present petitioner. He submitted that the language of Section 20 of the Right to Information Act is clear which permits the Second Appellate Authority to impose fine or direct disciplinary enquiry only. He submitted that there is no specific role attributed to the petitioner in the First Information Report, which fulfills ingredients of offences alleged against the petitioner no. 1. He submitted that it was not within his duty to maintain record sought by the respondent No.4.

11. Mr. Anil Mardikar, learned Senior Advocate submitted that the petitioner No.2, Clerk in the Court, which passed the decree of specific performance. He submitted that he had sent the record of the suit to Record Section and thereafter the petitioner No.2 is no way concerned with the affairs of the suit.

12. Mr. S.P. Dharmadhikari, leaned Senior Advocate along with Mr. Rohan Malviya, Advocate submitted that the petitioner No.3 is the Second Clerk in the Court, which passed the decree. He submitted that unless the decree is drawn, the record was not transmitted to the petitioner No.3. He submitted that there is no record that the proceedings of the suits in question were handed over to the petitioner. He submitted that he is not responsible for keeping record of the proceedings.

13. Mr. Harish Dangre, learned Advocate submitted that the respondent No.4 is the legal representative of original

judgment debtor, who expired in the year 2013. He submitted that the decree passed by the trial Court dated 30/01/2008 was conditional decree and became operative immediately on expiry of period of two months. He submitted that neither there was any application on 10/04/2008 nor there was any order passed by the trial Court permitting the respondents No.6 to 8 to deposit the balance consideration. He submitted that the order dated 10/04/2008 on application dated 10/04/2008 is forged so the application dated 10/04/2008 . He submitted that the receipts produced on record by the respondents No. 6 to 8 which reflects payment of balance consideration by demand drafts are genuine receipts. He submitted that when there is forgery in relation to the record of the Court, delay in pointing out such illegality will not be a relevant factor. He submitted that the Execution Applications were filed on 30/11/2017. He invited our attention to the applications and orders passed by the Authorities under the Right to Information Act to show that the applications and orders passed thereon dated 10/04/2008 are forged. He submitted that this Court while passing order dated 22/02/2021 has recorded *prima facie* finding that the applicants are guilty of offences under the provisions of the Indian Penal Code and under Section 9 of the Maharashtra Public Records Act.

14. Mr. Sunil Manohar, learned Senior Advocate with Mr. Vijay Bramhe, learned Advocate appearing on behalf of the respondents No.6 to 8 submitted that the decree passed on 30/01/2008 has been confirmed upto the Supreme Court. The Special Leave Petition filed by the respondent No.4 has been dismissed on 23/09/2016. The review filed by the respondent No.4 before this Court in Second Appeal is also dismissed on 13/10/2017. He submitted that till the dismissal of Review Application neither the original judgment debtor nor the respondent No.4 (legal representative of judgment debtor) had made any grievance about the non-existence of the application dated 10/04/2008 and order passed thereon. He submitted that the respondents No.6 to 8 had undisputedly filed Misc. Judicial Case Nos.179/2008 to 181/2008, on 16/4/2008. In paragraph No.4 of said applications the respondents No.6 to 8 have specifically disclosed that the amount of balance consideration

was deposited as per the order passed by the Trial Court. He submitted that the said Misc. Judicial Cases were affirmed on 16/04/2008. He submitted that all three Applications disclosing existence of order dated 10/04/2008 and application dated 10/04/2008 were on record of the court and brought to notice to the judgment debtor within six days from the date of its deposit. He submitted that the original judgment debtor had field an application seeking cross-examination of respondents No.6 to 8 on the point of extension of time to deposit the amount of balance consideration. He invited our attention to the cross-examination of the predecessor of respondent No.4 and submitted that there is no cross-examination made by the original judgment debtor about the application dated 10/04/2008 and order passed thereon though both the facts were specifically disclosed in paragraph No.4 of the application. He submitted that all three Misc. Judicial Applications were allowed after giving opportunity of hearing and after permitting cross-examination by order dated 28/01/2009. He submitted that undisputedly neither predecessor-in-title of respondent No.4 nor respondent No.4 have challenged order dated

28/01/2009 extending period of deposit. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Ramdas Shrinivas Nayak and another,** reported in **(1982) 2 SCC 463** to submit that the only way to correct record of the Court is to move an application before the same Court. He submitted that the learned Presiding Officer while allowing the application for extension of time to deposit balance consideration has specifically observed that the respondents No.6 to 8 have deposited amount on 10/04/2008 and therefore, it was necessary for predecessor of respondent No.4 or respondent No.4 to immediately move the Court raising dispute about filing of the application dated 10/04/2008. He submitted that acceptance of the balance consideration by the Nazir of the Court being official act, it carries presumption under Section 114(e) of the Indian Evidence Act, 1972 that it had been duly done. He submitted that merely because when the copy of the application and the order passed thereon dated 10/04/2008 is missing, same by itself is not sufficient to raise an inference that such application had never filed or such order was never passed, particularly when the judgment debtor and his legal representative kept mum for almost a decade.

15. Before we assess the submissions made at bar in the light of individual facts, it would be convenient to note that the crux of the controversy. The only issue which arises for consideration is

"whether respondents No.6 to 8 had filed an application dated 10/04/2008 and the learned Presiding Officer had passed order permitting respondents No.6 to 8 to deposit balance amount of consideration".

16. The Indian Evidence Act, 1872, incorporates certain presumptions under section 114. There is a statutory presumption under Section 114(e) of the Indian Evidence Act. Section 114(e) of the said Act reads as under:

"That judicial and official acts have been regularly performed"

17. Section 114(e) of the Indian Evidence Act enables the Court to presume existence of any fact which it thinks likely to have happened having regard to the common course of

natural events, human conduct and public and private business, in relation to the facts or each case. Illustration (e) empowers the Court that it may presume that judicial and official acts have been regularly performed.

18. The general presumption embodied in maxim "Omnia praesumuntur rite esse acta" is recognized by Section 114(e) of the Indian Evidence Act, which has a application to acts of judicial and official character. The basis of presumption is that normally Court of justice uphold official and judicial and other acts rather than render them inoperative. The presumption under the said maxim arises on the ground of public policy.

19. Where there is general evidence of Court proceedings having been legally and regularly done, the Courts may consider to dispense with principle of circumstances as regards the validity of judicial act, which are matter of record. If it is the duty of the Court to do particular thing, it may be presumed that the Court will deal its duty regularly. This would

imply that if it is proved that judicial or official act has been performed, then in the absence of another evidence, it may be presumed that it has been done regularly though there is no positive evidence. It is to provide for cases which, on account of laps of time, may not ambit of clear and direct proof, that the presumption under Section 114(e) of the Indian Evidence Act, is sanctioned. Such presumption gets strengthened by passage of time.

20. The presumption that a person acts honestly applies to official acts done by the Court officials. It is not sound judicial approach to distress and suspect them without there being cogent material or on the basis of complaint lodged after more than a decade as in the facts of the present case by the respondent No.4 to frustrate the decree against him. Such an attitude of distrust on court staff on the basis of complaint of disgruntled judgment debtor can severally affect administration of justice.

21. We see no reason as to why presumption under

Section 114(e) of the Indian Evidence Act should not be drawn in regard to regularity of act done by Nazir (petitioner No.1) while accepting the payment as per the order of the Court. Such presumption of act having done in regular course of business by the Officer of the Court gets strengthened in view of delay of almost a decade in disputing existence of order of the Court.

22. The presumption for correctness of an official act having been duly performed was noticed by the Supreme Court in **AIR 1966 SC 1931 (Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey and others)**, wherein the Hon'ble Supreme Court observed as under :

> "12. The only question now is whether such a sanction was given by the Board of Revenue. The kabuliat indicates ex facie that the lease was granted in perpetuity by the Deputy Commissioner on behalf of the Court of Wards. It is not disputed that the expressions "Deputy Commissioner" and "Collector" are synonymous. The same officer is called by both the names and he discharges the same functions. The land covered by the lease has been in possession and enjoyment of the lessee for about 80 years. The validity of the said grant was not questioned all these long years. Even in the plaint its validity was not challenged on the ground that the sanction of the Board of Revenue was not given. For the reasons mentioned by us in the context of Act V of 1859, in our view, this is a

> fit case where we can reasonably presume that when the lease was granted all the statutory requirements were complied with, that is to say the aforesaid reasons we hold that the lease of 1873 was valid and binding on the plaintiff."

23. What lays further credence to the existence of the application and order dated 10/04/2008 are the following facts and circumstances of the case :

i. Undisputedly the decree holder immediately within six days disclosed the fact of filing of application and order passed thereon to the judgment debtor.

ii. The predecessor of judgment debtor had filed an application for cross-examination of respondent Nos.6 to 8 on 06/10/2008. The predecessor of respondent No.4 was allowed to cross-examine respondent Nos.6 to 8. Respondent Nos.6 to 8 were cross-examined in detail on the point of extension of period of balance consideration, but, no questions were asked about existence of the application and order dated 10/04/2008.

iii. The respondent No.4, who has been impleaded in the proceeding as legal representative of original judgment debtor in the year 2013 , has no personal knowledge about either existence or non-existence of order or application dated 10/04/2008, as it is the respondent No.4 who was contesting the proceedings in the year 2008.

iv. Initially predecessor of respondent No.4 and thereafter respondent No.4 contested the decree up to the Hon'ble Supreme Court till 2017, but, never disputed existence of application or order dated 10/04/2008.

v. The learned Trial Court while allowing application for extension of time by order dated 28/01/2009 had recorded the fact of deposit of balance consideration on 10/04/2008 itself, but, undisputedly the order dated 28/01/2009 had not been challenged either by the predecessor of the respondent No.4 or by respondent No.4 himself.

vi. The respondents No.6 to 8 in an application dated 16/04/2008 in paragraph No.4 it specifically disclosed filing of application and orders passed thereon on 10/04/2008.

24. The cumulative effect of all the reasons stated above shows that the respondents No.6 to 8 had deposited balance amount of consideration as per order passed on 10/04/2008. Mere absence of application and order passed thereon dated 10/04/2008 cannot by itself lead to a conclusion that such order was never in existence.

25. We have gone through the report submitted by the Principal District and Sessions Judge, Nagpur along with letter dated 03/03/2021. On careful scrutiny of the report, it appears that the learned Principal District and Sessions Judge, Nagpur has drawn a conclusion that balance consideration was accepted by the Nazir without order of the Court. In our view, taking into consideration the facts and reasons stated in the said report, we do not find any plausible reason or indicators which prompted the learned Principal District and Sessions Judge, Nagpur to record the finding that the Nazir accepted balance consideration without order of the Court. The sum and substance of facts stated by the learned Principal District and Sessions Judge, Nagpur was to the effect that since the copy of

the application and order passed thereon is not traceable, this by itself is sufficient to draw inference that the balance consideration was deposited without order of the Court. The inference that balance consideration was deposited without order of the Court is based no reasons or material in support thereof. We therefore, cannot accept the report holding that the balance consideration was deposited without order of the Court.

26. The learned Advocate for the respondent No.4 placed reliance on the observations of this Court while issuing Rule, *prima facie* holding that the facts discloses commission of offence under the Indian Penal Code. It needs to be noted on the date of passing of the said order i.e. on 22/02/2021, the respondents No.6 to 8 were not parties to the Petition. It is only after the order was passed recording *prima facie* finding of commission of offence under the Indian Penal Code, the respondents No.6 to 8 filed an application for intervention. Along with the said application for intervention the respondents No.6 to 8 placed on record entire relevant documents, which are 27 in number. This Court while recording *prima facie*

finding of commission of offence under the Indian Penal Code had no advantage to consider the case of the respondents No. 6 to 8, who had personal knowledge about the events occurred on 10/04/2008. This Court on 22/02/2021 was not having advantage of hearing version of the respondents No.6 to 8. Therefore, in our opinion the respondent No. 4 cannot make capital out of *prima facie* observations of this Court prior to the respondents No.6 to 8 being made party to the Petition.

27. Taking overall view of the matter, we are of the view that the State Information Commission was not justified in directing and consequently the respondent No.2 was not justified in registering the First Information Report against the petitioners. We are satisfied that the continuation of proceedings against the petitioners would amount to abuse of process of Court.

28. We therefore, pass the following order :

The order dated 04/10/2018, passed by respondent No.3 in Appeal No. 2485/2018 to the extent of direction to register First Information Report against the petitioners and consequent registration of First Information Report bearing No. 71/2019, dated 22/02/2019 for offence punishable under Section 9 of the Maharashtra Public Records Act, are quashed and set aside.

Rule is made absolute in above terms.

JUDGE **JUDGE**

MP Deshpande