

Urmila Ingale

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

WRIT PETITION NO. 1629 OF 2022

Ms. Ruby Madan
Alias Ruby Madan Dhingra ..Petitioner
vs.
Mr. Surender Dhingra ..Respondent

Ms. Kokila Kalra a/w Mr. Subhash Bijlani, for petitioner.
Ms. Krusha Maheshwari i/b ANB Legal, for Respondent.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 14, 2022

P.C. :

1. Heard learned counsel for the petitioner. The petitioner is aggrieved by the order dated 25/11/2021 passed by the Family Court, Bandra. It is the contention of the learned counsel for the petitioner-wife that the parties were to act on the basis of the consent terms dated 21/10/2016 filed before the Family Court at Bandra. One of the clauses of the consent terms was clause 5, which reads thus:

"5. Petitioner has owned residential flat which is situated at 44/45 Block-B, Meherzin-109 Wodehouse

Road, Colaba, Mumbai-5. Both the Parties have agreed to dispose of the said property at price not below Rs.5 crores i.e. Rs.5,00,00,000/- within 90 days from today and whatever the sale proceed will be shared by both of them. The Petitioner will receive 75% and Respondent will receive 25% of the total sale proceed after deduction and brokerage and other charges, if any, 75% amount will be paid to the Petitioner towards full and final settlement inclusive of Petitioner claim of one time permanent maintenance. After receiving the 75% of the sale proceed Petitioner will not make any claim of maintenance against the Respondent in future.”

2. It is the contention of the learned counsel for the petitioner-wife that the wife made an attempt to sell the property. However, the sale could not be completed due to de-monetisation. It is contended that the respondent-husband is not willing to comply with the consent terms.

3. The application was made by the petitioner-wife at Exhibit 58 for direction to husband to proceed with the sale proposed by her. Exhibit 58 is for enforcing the consent terms and directing the husband to proceed with the sale proposed in view of the consent terms. During the pendency of Exhibit 58, an application Exhibit 64 was made by respondent-husband for injunction. By the impugned order dated 25/11/2021, status-quo was granted in view of the fact that the application Exhibit 58 is yet to be decided.

The status quo was till the decision on Exhibit 58 on merits.

4. Learned counsel for the respondent-husband submits that the consent terms were entered into by him on account of some misrepresentation. It is now contended that the respondent-husband had paid for purchase of the flat and the flat belongs to him as well. This is disputed by learned counsel for the petitioner-wife as according to him, the entire consideration was paid by the petitioner-wife and even the consent terms records that the flat is owned by her.

5. Be that as it may, learned counsel for the respondent-husband submits that in view of this pending petition, an appropriate application for recalling of the consent terms was not be filed and that the respondent-husband intends to file such application. She submits on instructions that she would withdraw Exhibit 64 application filed before the Family Court and proceed to file an application for recall of the consent terms. It is open for the petitioner to take further steps in the matter in accordance with law. In view of the submissions made by learned

counsel for the respondent-husband for withdrawal of application Exhibit 64, the same stands withdrawn.

6. Liberty to file an application for recalling of the consent terms, which if so filed, would be considered on its own merits and in accordance with law.

7. I may not be understood to have made any observations on the merits of the tenability or otherwise of such application and the same shall be decided in accordance with law.

8. For a period of 4 weeks from today, the petitioner-wife not to dispose of or otherwise deal with the suit property.

9. The parties to appear before the the Family Court on 09/11/2022 along with copy of this order.

10. Considering the advanced age of the parties, as the wife is 68 years of age and husband is 75 years of age, proceedings filed before the Family Court need to be expedited. The Family Court is requested to hear and decide the main petition itself expeditiously, preferably within 9 months from 09/11/2022.

11. The writ petition is disposed of.

(M. S. KARNIK, J.)