

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

WRIT PETITION NO. 4133 OF 2022

Kailashchandra Rameshwarprasad Agrwal V/S Bhalchandra Krishna Patil & Ors	PETITIONER RESPONDENTS
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Adv. Rajan Visanji Thakkar for the Petitioner
Adv. J. S. Kini a/w Adv. Sapna S. Krishnappa for the respondent
nos. 1 & 2

CORAM : NITIN W. SAMBRE, J.

DATE : 1st AUGUST, 2022

P.C.:-

1. Heard.
2. The order impugned dated 05/03/2019 passed by the Judge of Small Causes Court below Exhibit-55 i.e. application is taken out by present petitioner/defendant no. 12 seeking appointment of Court Receiver alongwith other allied reliefs.
3. It is the contention of learned counsel for the petitioner that the building is ready to occupy as the occupation certificate is already issued.
4. According to him, the dispute as regards the consideration payable for additional area is being looked into by the Small Causes Court which proceedings are likely to be concluded in recent future in execution proceedings in Marji Application No. 621

of 2012.

5. As such, according to him, the Court below ought to have appointed the Court Receiver over the property to which the petitioner was entitled under the decree, as there is every likelihood that the said property will be vested in 3rd party at the behest of respondent-developer. He has also claimed that petitioner can be put in possession as agent of court receiver as petitioner is willing to pay agreed consideration.

6. The learned counsel for the respondent-developer, Mr. Kini on instructions submits that the respondent-developer has no intention to create any 3rd party interest in relation to the said property, however the petitioner has not paid the consideration as per scheduled agreed.

7. He would urge that said statement be accepted as an undertaking that till the Marji Application is decided, the respondent-developer shall not create any 3rd party interest in relation to the property to which the petitioner is entitled.

8. In the backdrop of aforesaid statement, in my opinion the petitioner's interest is taken care of, in view of the aforesaid undertaking. However, it has to be noted that petitioner has claimed that respondent-developer has not executed agreement for additional area as such consideration was not paid as per

schedule and the respondent is demanding the market rate for the additional area to which the petitioner is not agreeing. Said issue is informed to be looked into by the executing court. Hence, the petition stands disposed of.

9. It is directed that Marji Application No. 621 of 2012 be decided expeditiously.

10. As regards the issue of receivability of rent by the petitioner from the respondent-developer is concerned, the same is kept open and this Court expects the Executing Court to look into the same as liability to that effect is arising out of the consent decree of which execution is under process.

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(NITIN W. SAMBRE, J.)