

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

WRIT PETITION 2850 OF 2022

Sunil Trimbak Choudhari	...	Petitioner
<i>Versus</i>		
Deepak Digambar Jadhav	...	Respondent

Mr. V. S. Talkute a/w Mr. Prashant D. Jadhav for the Petitioner.
Mr. Uzain Kazi a/w Mr. Md. Tahashah N. Shaikh for the Respondent.

CORAM: ROHIT B. DEO, J.
DATE : 27th JUNE, 2022

P.C. :-

1. The petitioner is the judgment debtor who is assailing order dated 9th July, 2020 below exhibit 51 and order dated 21st January, 2022 below exhibit 66 in Special Darkhast 13 of 2016, rendered by the Jt. Civil Judge, Senior Division, Malegaon. The respondent is the original plaintiff who instituted Civil Suit 57 of 2014 seeking decree of specific performance of the suit agreements dated 19th September, 2012 and 19th June, 2013 wherein the defendant agreed to sell shop 1 on the ground floor of Sundara Residency situated at plot 4, Sangameshwar, Malegaon.

2. In brief, the plaintiff contended that vide agreement of sale dated 19th September, 2012, the defendant agreed to sell shop 1 admeasuring

180 sq. ft. to the plaintiff for total consideration of Rs.5,25,000/- (Rupees Five Lakhs Twenty Five Thousand Only) and the defendant paid earnest amount of Rs.2,00,000/- (Rupees Two Lakhs Only) in presence of witnesses. A supplementary agreement dated 11th June, 2013 was executed between the parties and the defendant was paid further amount of Rs.1,00,000/- (Rupees One Lakh Only). On 17th July, 2013, the defendant paid another installment of Rs.1,00,000/- (Rupees One Lakh Only). According to the plaintiff, the defendant refused to perform his part of the contract and the plan which he got sanctioned from the Malegaon Municipal Corporation, shows the area of shop 1 as 81 sq. ft.

3. The defendant filed written statement of total denial. He denied having executed the agreement, denied his signature on the documents which the plaintiff placed on record and claimed that the plaintiff is not the acquainted with him and there was no occasion to enter into any transaction with the plaintiff.

4. The learned Trial Judge, on the basis of the evidence adduced, held that the plaintiff proved the suit agreement and that he was ready and willing to perform his part of the contract. The learned Trial Court noted the admissions in the cross-examination of the defendant and

recorded finding that contrary to the promise made, the area of shop 1 was unilaterally reduced from 180 sq. ft. to 81 sq. ft. The learned Trial Court was pleased to decree the suit and order the defendant to complete the construction of shop 1 as would make the area 180 sq. ft. and after supplying copy of the completion certificate execute the sale deed in favour of the plaintiff by accepting the balance consideration of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand Only).

5. The operative part of the judgment dated 1st February, 2016, reads thus :-

ORDER

- 01) *The suit is hereby decreed with costs.*
- 02) *The defendant is ordered to complete the construction of Shop No.1 to the extent of area of 180 Sq. Feet, as agreed and place the window in the western side wall of it and after supplying the copy of completion certificate execute sale-deed in favour of plaintiff by accepting remaining consideration amount of Rs.1,25,000/- (Rs. One Lakh Twenty Five Thousands Only) and hand-over its possession to plaintiff.*
- 03) *If the defendant fails to do so, the plaintiff is at liberty to get execute sale-deed by appointing Court Commissioner.*
- 04) *Defendant is permanently restrained from alienating the suit property to third person by and way of transfer till execution of sale-deed and parting the possession to plaintiff.*
- 05) *Decree be drawn up accordingly.*

6. The defendant duly deposited the balance consideration of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand Only) in the

Court and preferred an application exhibit 12 contending that the Court Commissioner be appointed to complete the construction of shop 1. This application was preferred in Special Darkhast 13 of 2016 and was allowed by the Executing Court vide order dated 11th November, 2016, the operative part of which reads thus :-

ORDER

- 01) *The application is hereby allowed.*
- 02) *Shri. Hemant Dani, Architect-Engineer, Ekatmata Square, Camp Road, Malegaon is hereby appointed as a Court Commissioner. He is directed to get completed the construction of shop no.1, admeasuring 180 sq. feet, as directed in the decree and get placed the window in the western side wall of the said shop and thereafter secure the completion certificate from Malegaon Municipal Corporation and submit to the Court.*
- 03) *For the purpose of construction, the D.H. is directed to spend the amount and he is at liberty to recover it from J.D., after completion of construction work.*
- 04) *D.H. shall deposit an amount of Rs. 10,000/- (Rs. Ten Thousand Only) tentatively towards the fees of Court Commissioner. He shall be entitled to ask for the excess amount, if any, after completion of commission work and if Court thinks it feet to do so.*
- 05) *The Court Commissioner is directed to get completed the construction work within the period of three months and shall file his report to the Court accordingly.*

7. It appears that the Court Commissioner Mr. Hemant Dani, Architect-Engineer, did complete the construction and an application exhibit 26 was preferred by the plaintiff-decree holder to appoint the Assistant Superintendent of the Civil Court as Court Commissioner to

execute the sale deed. Vide order dated 13th September, 2019, the Executing Court directed the decree holder to file completion certificate regarding the construction made by the Court Commissioner. The plaintiff-decree holder then preferred application exhibit 51 pointing out that the construction of the entire building is not complete and while the construction of shop 1, which is the suit property is complete, since the plaintiff-decree holder is not the owner of the entire building, he would not be in a position to obtain the completion certificate. The plaintiff-decree holder sought a direction to the Municipal Corporation, Malegaon to issue the part completion certificate.

8. The Executing Court partly allowed the application exhibit 51 and the operative part of the order dated 9th July, 2020, reads thus :-

ORDER

1. *Application is hereby allowed.*
2. *The Municipal Commissioner, Malegaon is directed to take steps on the application of plaintiff as per law and if the construction of suit shop is found to be made as per law, to issue Part Completion Certificate to the plaintiff within two months from the date of this order.*
3. *Plaintiff to pay the cost of said proceedings.*

9. The plaintiff-decree holder then preferred application exhibit 66

pointing out that he could not secure the part completion certificate from the Municipal Council and in any event the responsibility to obtain such certificate is that of the defendant-judgment debtor. The plaintiff sought a direction that the sale deed be executed in his favour through the Court Commissioner.

10. The Executing Court disposed of application exhibit 66 vide order dated 20th January, 2022, the operative part which reads thus :-

आदेश

१. प्रतिवादी/ऋणकोने विशेष दिवाणी दावा क्र. ५७/२०१४ चे हुकु मनाम्याप्रमाणे अंमलबजावणी करण्यासाठी या आदेशापासून एक हिन्याचे अंत वादी/धनकोला दावा मिळकतीचे खरेदी ख माले गांव मनपाकडून पूर्वाचा दाखला घेऊन लिहून व नोंदवून द्यावे
२. प्रतिवादी/ऋणकोने सदर आदेशाप्रमाणे त्वा न केल्यास प्रतिवादी/ऋणकोविरुद्ध विशेष दिवाणी दावा क्र. ५७/२०१४ चे हुकु मनाम्याप्रमाणे अंमलबजावणीसाठी वादी/धनकोने आदेश २१नियम ३२ दिवाणी प्रक्रिया संहिताप्रमाणे कार्यवाही करावी.
३. तरीही प्रतिवादी/ऋणकोने वादी/धनकोला सदर हुकु मनाम्याप्रमाणे त्वा करून न दिल्यास या न्यायालयामार्फत दावा मिळकतीचे खरेदी ख माले गांव मनपाकडून पूर्वाचा दाखला घेऊन लिहून व नोंदवून देण्याबद्दलचे आदेश पारीत केले जातील.

11. Aggrieved by the orders below exhibit 51 and exhibit 66 supra, the defendant-decree holder is invoking supervisory jurisdiction under Article 227 of the Constitution of India.

12. In essence, the submission of the learned counsel for the

defendant is that in the absence of completion certificate neither the defendant nor the Court Commissioner would be in a position to execute the sale deed. It is further submitted that the order dated 20th January, 2022 below exhibit 66 reviewed the earlier orders in the execution proceedings, particularly the orders below exhibit 26 and exhibit 51. The learned counsel for the plaintiff would submit that the only attempt and intent of the defendant is to ensure that the plaintiff is not in a position to enjoy the fruits of decree. The learned counsel for the plaintiff invites my attention to the material on record to buttress the submission that every attempt is made by the defendant to take advantage of his own dishonest conduct of unilaterally reducing the area of shop 1 from 180 sq. ft. to 81 sq. ft. It is further submitted by the learned counsel for the plaintiff that having agreed to sell shop 1 admeasuring 180 sq. ft., it does not lie in the mouth of the defendant to contend that in the sanctioned plan the area is 81 sq. ft., since the defendant could have sought sanction for 180 sq. ft. by reducing the area of the other units. The learned counsel for the plaintiff submits that as the situation stands now, the defendant is taking the shelter of the difficulties faced in obtaining the completion certificate, which difficulties and problems are of his own making.

13. Having considered the submission canvassed, and having scrutinized the material on record minutely, I have no doubt in my mind that the conduct of the defendant-judgment debtor is clearly unacceptable. I agree with the submission of the learned counsel for the plaintiff that the only attempt and intent is to delay the execution.

14. During the course of hearing, the learned counsel for the plaintiff invited my attention to clause 3 of the operative part of the order dated 20th January, 2022. The learned counsel for the plaintiff emphasized that since the defendant is not willing to execute the sale deed, the same may be executed through the intervention of the Court, reserving the right of the plaintiff to take appropriate action on the basis of clauses 1 and 2 of the order dated 20th January, 2022. In rebuttal, the learned counsel for the defendant would submit that the rights of his client to demonstrate that directions 1 and 2 are not workable or executable should not be foreclosed and all contentions of the defendant-judgment debtor be kept open.

15. Considering the present situation, I consider it appropriate to dispose of the petition by directing that the sale deed be executed through the intervention of the Court in terms of clause 3 of the operative part of the order dated 20th January, 2022 and the respective

rights, obligations and contentions of the plaintiff and the defendant as regards clauses 1 and 2 are kept open for consideration at an appropriate stage, if the situation so necessitates and I order accordingly :-

ORDER

- (a) The petition is disposed of as aforestated. No order as to costs.

[ROHIT B. DEO, J.]

BIPIN
DHARMENDER
PRITHIANI

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by BIPIN
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