

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

WRIT PETITION NO.7115 OF 2019

Tanaji Digambar Kadam

..Petitioner

Versus

Smt. Kunda Shrilal Doshi

..Respondent

Mr. Surel Shah i/by Vishwanath S. Talkute a/w Graham Francis, for the Petitioner.

Mr. Nikhil Wadikar a/w Komal Bhoir & Faiza Shaikh i/by Nandu Pawar, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 8th MARCH, 2022

PC.

1. The petitioner was in possession of two shops viz. Shop Nos.1 and 2 out of house property CTS No.6482 Plot No.65 admeasuring 3278 sq.ft. situated at Taluka Phaltan, Dist. Satara. The respondent/landlord initiated RCS No.116 of 2011 which was compromised by drawing decree on 27th February, 2012, as a consequence, respondent/plaintiff received possession of Shop No.1 immediately, whereas Shop No.2 was to be surrendered after two years of said compromise decree or about 26th February, 2014, if the petitioner fails to pay the market value of the said property so as to get sale-deed executed in his favour as per terms of the compromise decree.

2. It appears that the dispute in the petition now is restricted only to the execution of sale-deed by the respondent/landlord in favour of petitioner/tenant or else the possession to be received by the respondent from the petitioner.

3. It appears that the Regular Darkhast No.38 of 2014 was taken out by the petitioner on 10th June, 2014 in execution of the aforesaid compromise decree claiming that the respondent/landlord be directed to execute the sale-deed as he is willing to pay the market value as on the date of maturity mentioned in the compromise decree.

4. Since the amount that was offered by the petitioner towards consideration was not as per market rate, respondent/landlord filed suit being Special Civil Suit No.102 of 2014 seeking directions to the petitioner to get the sale-deed executed in relation to Shop No.2 at market value as per compromise decree or in alternate hand over possession of the same. The suit came to be decreed on 20th May, 2016. It appears that the aforesaid decree is not questioned by the petitioner and same was put into execution by the respondent/landlord/decreed holder in Special Darkhast No.11 of 2016 before the Court of Civil Judge Senior Division, Satara. The application Exh.1 taken out by the respondent/landlord for issuance of possession warrant which is allowed vide impugned order dated 8th April, 2019. As such, this petition.

5. Heard Mr. Surel Shah, learned counsel for the petitioner and Mr. Nikhil Wadikar, learned counsel for the respondent/decree holder.

6. According to Mr. Surel Shah, petitioner was always willing to honour terms of the compromise decree which was led to initiation of execution proceedings i.e. Regular Darkhast No.38 of 2014. According to him, petitioner has already deposited an amount of Rs.6,50,000/- as per the market valuation towards consideration to be received by respondent in the said execution proceedings, however, the respondent has failed to cooperate in executing sale-deed. He would further claim that the claim of market value of Rs.40,00,000/- as on date cannot be gone into or appreciated keeping in mind the fact that the decree was executable in 2014 and the petitioner was ready and willing to part his obligation which he has demonstrated by depositing amount of consideration. In addition, he would claim that the respondent/landlord is trying to take undue advantage of the subsequent decree passed in Special Civil Suit No.102 of 2014 thereby trying to twist arm of the petitioner so as to extract consideration at higher value. As such, according to him, order impugned is not sustainable and liable to be quashed and set aside.

7. Counsel for the respondent would oppose the aforesaid claim. According to him, the compromise decree which is sought to be executed vide Regular Darkhast No.38 of 2014, will be of hardly

any significance in subsequent decree in Special Civil Suit No.102 of 2014. According to him, the claim as has been put forth hereinbefore was already looked into and adjudicated and subsequently the decree came to be passed which is subject matter of execution in Special Darkhast No.11 of 2016. According to him, it is for last six years Regular Darkhast passed in Special Civil Suit No.102 of 2014 is not executed. He would claim that if the petitioner deposits an amount of market value which is around Rs.40,00,000/-, the respondent/landlord is willing to execute the sale-deed. According to him, the offers on the part of the petitioner of Rs.6,50,000/- is nothing but to delay and enjoy illegal possession over the suit property.

8. Considered rival submissions.

9. On last occasion, this Court had called upon the petitioner to show his bonafides by depositing amount in this Court of Rs.40,00,000/- as has been claimed by the respondent/decreed holder. This Court assured that in case if petitioner demonstrates his bonafides by depositing an amount, further procedure viz. calling upon the valuation report from government approved valuer or competent officer like Sub-Registrar can be taken recourse to. However, the petitioner has failed to comply with the same and as such has not demonstrated his bonafides in offering market value to decree holder.

10. Rather petitioner has tried to stick to his guns i.e. the market value of Rs.6,50,000/- as was existing in 2014. The said amount was not deposited in execution proceedings i.e. Regular Darkhast No.38 of 2014 along with the respondent/landlord claims the market value of today's rate i.e. Rs.40,00,000/- in this background.

11. If the aforesaid contentions are appreciated, this Court is required to be sensitive to the subsequent decree passed at the behest of the respondent/landlord in Special Civil Suit No.102 of 2014 which is suffered by the petitioner herein. Admittedly, the petitioner has not questioned the said decree before the Appellate Court and the decree as such has attained finality *inter se* between the parties. The said decree in categorical terms provides getting the sale-deed executed at market value i.e. after the suit was decreed i.e. after 2016 and as such petitioner is at falsity in claiming that market value of 2014 ought to have been appreciated.

12. Mr. Nikhil Wadikar, counsel for the respondent is justified in claiming that the petitioner has not only failed in his obligations to comply with the decree in either of the suits as the amount of consideration of Rs.6,50,000/- as has been claimed to have been deposited was at much belated stage i.e. on 16.09.2019. As such, claim that the valuation of 2014 to be taken into consideration, will be hardly any assistance in favour of the petitioner.

13. The fact remains that even today also there are no bonafides on the part of the petitioner to demonstrate the compliance of the decree by depositing the market value in execution of the decree of 2016 in Special Darkhast No.11 of 2016. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out.

14. The petition as such fails, dismissed.

15. At this stage, Mr. Surel Shah submits that this Court shall restrain the respondent/landlord from executing possession warrant for a period of four weeks as he has instructions to test present order before the Apex Court. Since the decree is not executed for last around six years, there shall be stay to the execution of possession warrant for a period of four weeks from today, after which the decree will be made executable.

[NITIN W. SAMBRE, J.]