

H. H. Sawant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15190 OF 2022

Avinash Sakharam Tanavade .. Petitioner
 Versus
 M/s. A. J. Constructions .. Respondent

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- Mr. Kishor Patil i/by. Ms. Vaishnavi M. Gujarathi for Petitioner
 - Mr. Yatin R. Shah for Respondent

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 22, 2022.

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner and Mr. Shah, learned Advocate for Respondent.
2. Pursuant to the orders dated 09.12.2022 and 14.12.2022 parties have reconciled their differences and filed Minutes of Orders dated 22.12.2022 which are signed by the learned Advocates for both the parties. Petitioner is present in Court and confirms having given instructions as stated in the Minutes of Orders. The Minutes of Order is taken on record and marked “X” for identification. The undertaking recorded in the Minutes of Order are accepted as undertaking given to this Court. Hence, the following order:-

ORDER

1. The Present Petition is filed challenging order dated 06.04.2022 passed by the learned 2nd Additional Principal Judge, City Civil Court, Mumbai in S.C.Suit

No.1622 of 2016 by which a suit is allowed to be withdrawn totally overlooking the Notice of Motion Nos. 2232 of 2021 and 126 of 2022 filed by the Petitioners, so also, totally overlooking the earlier orders passed by the learned City Civil Court as well as by the Hon'ble Court and the Hon'ble Supreme Court.

2. The subject matter of the present Petition is Flat No. 301 in a newly constructed building having an area admeasuring 412 sq.ft.

3. The Respondent (Org. Plaintiff) filed S. C. Suit No.1622 of 2016 before the City Civil Court, Mumbai against the present Petitioner seeking reliefs to direct the present Petitioner to handover vacant and peaceful possession of Flat No. 301 for carrying out redevelopment. A further relief was sought in the nature of declaration that the Defendant i.e. present Petitioner would be rehoused in the newly constructed premises in the building to be reconstructed at the same place as also relief of Injunction to restrain the Defendant (present Petitioner) from putting any obstruction in the redevelopment process.

4. During the pendency of the suit under order

dated 13.07.2016 passed in Notice of Motion No. 1892 of 2016 the Court Receiver, High Court was appointed over the old premises which was to be demolished for redevelopment process.

5. The old building was demolished and the new building was constructed. New flat bearing No. 301 was ready to be allotted to the Petitioner in lieu of the old flat (Which was demolished for redevelopment).

6. The present Petitioner took out Notice of Motion No. 4233 of 2018 for directing Respondent (Org. Plaintiff) to hand over possession of the new flat in view of the Prayer clause (b) of the Suit.

7. By an order dated 13.09.2019 the Notice of Motion taken out by the present Petitioner was allowed and that the Respondent (Original Plaintiff) was directed to handover possession of newly constructed Flat No. 301 having Carpet Area of 412 Sq. Ft.

8. The above order dated 13.09.2019 was challenged before this Hon'ble Court in appeal from Order No. 185 of 2021. Interim Application No. 2136 of 2019 in the said Appeal from order seeking relief of stay was rejected by an order dated 11.08.2021. This

Hon'ble Court further by separate order dated 11.08.2021 permitted the present Petitioner to shift in new premises at his own cost.

9. The present Respondent challenged said order of this Hon'ble Court before the Hon'ble Supreme Court. However, the SLP filed by the Respondent is rejected and same is recorded in the order dated 06.04.2022 by the City Civil Court.

10. In view of the orders passed by this Hon'ble Court, the present Petitioner approached the Respondent herein for possession, however, Respondent refused. A request was even made to the Court Receiver, High Court, however, even Court Receiver refused to hand over possession.

11. The Petitioner therefore, took out a Notice of Motion No.2232 of 2021 to open the seal and for possession.

12. The present Respondent (Original Plaintiff) filed an application before the Trial Court for withdrawal of the Suit. The Petitioner objected the same placing all the orders passed till Hon'ble Supreme Court and objected the plea of Plaintiff for withdrawal of suit.

13. Totally overlooking the objection the Trial Court permitted the Respondent (Original Plaintiff) to withdraw the suit.

14. It is against the said order present Petition is filed.

15. This Hon'ble Court after hearing the Petition, had called upon the Receiver to furnish the details of the amount to be paid towards the Receiver charges.

16. The present Respondent (Original Plaintiff) had requested that the Receiver charges are to be borne by the present Petitioner. Though the Petitioner objected to the same on the ground that the Court Receiver was appointed on motion of Respondent plaintiff showed his readiness to pay the Receiver's amount. The Court Receiver on 14.12.2022 informed the Petitioner that the Court Receiver charges are Rs.40,374/- (Rupees Forty Thousand Three Hundred and Seventy Four Only). The Petitioner accordingly had paid the charges on 14.12.2022 by a Demand Draft bearing No.204157 drawn on Saraswat Bank, Borivali Branch.

17. This Hon'ble Court had permitted both the parties to file their claim affidavits against each other

regarding their claim against each other and in consonance to the same both the Petitioner and Respondent have filed their respective affidavits.

18. The parties for their claims against each other are at liberty to file appropriate proceedings before the Appropriate Court/Forum. All contentions of both the parties to the present Petition are kept open which would be independently adjudicated before the appropriate court/forum. The present order is being passed without prejudice to the rights and contentions of the Respondents to agitate their claim against the Petitioner.

19. The Receiver who is in the possession of Flat No.301, 3rd Floor, Jay Apartment, Jay Raj Nagar Vazira Naka, Opp. Mahisa Mardani Garden, Borivali (W), Mumbai 400 091 in the new buildings is hereby discharged.

20. The Court Receiver to forthwith handover possession of Flat No. 301 to the Petitioner. In view of the order dated 13.09.2019 passed in Notice of Motion No. 4233 of 2018 as well as the order dated 11.08.2021 passed by this Hon'ble Court in Interim

Application No. 1813 of 2021 in Appeal from order
No.185 of 2021.

21. No order as to costs.

3. Court Receiver is directed to forthwith act upon an authenticated
copy of the this Order.

4. Writ Petition is disposed in terms of above.

[MILIND N. JADHAV, J.]

Digitally
signed by
SONALI
SATISH
KILAJE
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