

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

**WRIT PETITION NO.277 OF 2018
WITH
CIVIL APPLICATION 1038 OF 2019**

Yadav Consultancy Services Pvt. Ltd.

And Another ... Petitioners

Versus

M/s J.D. Gandhi Constructions ... Respondent

Mr. Prakash W. Yadav, Petitioner No.2 in person.

Mr. Sudhir V. Sadavarte for the Respondent.

CORAM : S. M. MODAK, JJ.

RESERVED ON : 10 DECEMBER 2021

PRONOUNCED ON : 13 JANUARY 2022

JUDGEMENT:

. Heard by consent finally at the admission stage itself. **Rule.**

2 Petitioner No.2 claims to be a Managing Director of Petitioner No.1 company. He has tried to persuade Legal Services Authority for getting an Advocate as legal aid counsel. There is no further development. Without waiting further, considering the limited controversy involved, I have heard him and Mr. S.V. Sadavarte, learned Counsel for the Respondent. It seems that Petitioner No.2 is pursuing since long about his grievance about not producing

document before the trial court. He and his company were defendants in Special Summary Suit No.18 of 2009. That was the suit for recovery of money filed by the vendor/builder, the present Respondent against these two Petitioners. The suit was decreed.

3 At least from the record made available, it can be said that the Petitioners have not preferred substantial civil appeal. The grievance of the Petitioners is that the builder is bound to supply a copy of sanctioned plan pertaining to shop/office taken on lease by the Petitioners. In spite of their insistence, the court dealing with the suit has not paid any heed to their grievances and passed a money decree. In the proceedings subsequently initiated by the Petitioners, they have reiterated this grievance. However, those were not accepted. According to them, it was very much essential for the builder to produce the sanctioned plan and it is one kind of fraud. So their grievance is that a decree was obtained by fraud.

4 I am afraid that on this occasion, supervisory jurisdiction of this court under Article 227 of the Constitution of India can be exercised in favour of the Petitioners. Why I say “on this occasion”, because earlier when the Petitioners had filed Writ Petition No.3553 of 2015, the present Petitioners, were given an opportunity to substantiate their grievances by way of an application in Special Summary Suit No.18 of 2009. Thereafter, they were prosecuting the present proceedings before the executing court and the same was rejected as per the order dated 24 October 2017. Their grievances

were considered as a review prayer. The executing court by impugned order refused to review the order passed earlier on 5 January 2017. The Petitioners being aggrieved by the order dated 24 October 2017, have requested this court by way of the present petition to exercise a supervisory jurisdiction.

5 Prior to considering the grievances, it would be material to consider few important dates and events. They are as follows :-

- | | | |
|-----|-------------------|--|
| (a) | 6 February 2008 | The agreement to lease shop Nos.212 to 2018. |
| (b) | 7 February 2009 | Filing of Special Summary Suit No.18 of 2009 against these Petitioners for recovery of Rs.14,21,000/- (towards consideration). |
| (c) | 28 February 2014 | The suit decreed. Money claim to the extent of Rs.12,00,000 was accepted. |
| (d) | 24 September 2014 | Order on Exhibit 14 passed in Special Darkhast No.68 of 2014 by 2 nd Jt. CJSD, Pune (the application by the Petitioners making grievance that decree is obtained by fraud). |
| (e) | 13 January 2016 | The order passed by this court in Writ Petition No.3554 of 2015. (Page 62) |
| (f) | 5 January 2017 | Rejection of special request of removing the error filed in Special Darkhast No.68 of 2014 (for setting aside money decree obtained by by fraud). |

(g) 24 October 2017 Rejection of review application in respect of the order dated 5 January 2017.

6 Petitioner No.2 relying upon the following judgments emphasized what is the effect of fraud on orders passed by the court. Those judgments are as follows :-

- (1) **S.P. Chengalvaraya Naidu Vs. Jagannath**¹
- (2) **A.V. Papayya Sastry Vs. Govt. of A.P.**²
- (3) **Ganpatbhai Mahijibhai Solanki Vs. Stte of Gujarat**³

7 Whereas, Mr. Sadavarte, learned Counsel appearing for the Respondent brought to my notice various events that occurred after passing of a money decree and according to him, resorting to supervisory jurisdiction at the instance of the Petitioners is totally unwarranted. According to him, the Petitioners are not resorting to legally available remedies and instead they have troubled this court by filing the present petition.

8 There cannot be any dispute about proposition of law that fraud vitiates every act and it invalidates all decisions taken on the basis of fraudulent acts or mis-representations. The Hon'ble Supreme Court in case of **S.P. Chengalvaraya Naidu** have reiterated the effect of fraud. In that proceedings the lease deed was not brought to the notice of the court which is of a partition suit.

1 AIR 1994 Supreme Court 853

2 (2007) 4 Supreme Court Cases 221

3 (2008) 12 Supreme Court Cases 353

9 In that matter by the impugned order, the application for grant of final decree was rejected. In an appeal, the High Court set aside that order. However, the Supreme Court set aside the order of the High Court. Though the plaintiff in that matter executed a lease deed, he filed a suit for partition by disclosing that he purchased the property in his name and not on behalf of other. So, on account of not producing the vital document, i.e. the lease deed, the Hon'ble Supreme Court has confirmed the order of the trial court, thereby rejecting the prayer for passing decree. Merely, because the defendants could have produced that document was not considered as a circumstance against the plaintiff. However, it is important to note that remedy of substantive civil appeal was exhausted therein.

10 In case of **A.V. Papayya Sastry**, as referred above, the Hon'ble Supreme Court have again reiterated the effect of the fraud on any decision. If the judgement is obtained by fraud, the grievance can be raised even before the final court. A discretionary and equitable jurisdiction can be exercised when justice and a good conscious required. Similarly, in case of **Ganpatbhai Mahijibhai Solanki**, similar principle about the effect of fraud has been reiterated.

11 As said above, there cannot be any dispute about this enunciation of law, because if any action or decision taken by one person on the basis of fraud played by another person, it goes to the root of that decision taken. But there are so many other factors to be considered before the decision taken is to be set aside. It depends

upon whether it was within the domain of the aggrieved person to make a grievance about fraud, when he for the first time makes a grievance of a fraud, even though an opportunity is available to make grievance of fraud, still he does not make that grievance and for agitating such grievance, he chooses not statutory remedy, but a constitutional remedy are some of the factors to be considered while accepting the grievance of fraud.

12 The trial court has decreed the money suit. The suit was contested even by the present Petitioners. The executing court while passing the orders on 5 January 2017 and on 24 October 2017 has emphasized on inaction of the present Petitioners in not making the grievance (about hiding document / land construction) before the trial court and hence, while passing the first order on 5 January 2017 (which order was passed in an inquiry as directed by this court on 13 January 2016), and the executing court while rejecting the review prayer on 24 October 2017, as refused to accept those prayers.

13 The grievance for not producing the document/plan was very much available to the Petitioners when they contested the special summary suit. It may be true that the Petitioners may be having importance of that plan. However, it does not mean that this court while exercising supervisory jurisdiction should entertain such grievance, particularly, when an opportunity to make grievances was

very much available to the Petitioners when they contested the suit. For two reasons does not deem it proper to exercise the supervisory jurisdiction. One is grievance was not made when the suit was contested and second, the executing court while passing the order dated 24 October 2017 have given logical and legal reason for rejecting the prayer. This court subscribed to those reasons. Those reasons are from paragraphs 12, 13 and 14 of the impugned order dated 24 October 2017. Even the executing court has arrived at this conclusion after Petitioners gave evidence (as permitted by this court on 13 January 2016).

14 For the reasons stated above, this court is not inclined to exercise supervisory jurisdiction in favour of the Petitioners. The jurisdiction under Article 227 of the Constitution of India is not be exercised in routine manner. If there is a violation of fundamental right or violation of principle of natural justice, this court does not hesitate in exercising said jurisdiction. However, these are not the circumstances in the present case. Hence, the writ petition has to be dismissed. The writ petition is dismissed. The parties to bear their own costs. If the Petitioners are so desirous, they are at liberty to pursue the statutory remedies by giving justification which are permissible by law and in that eventuality, the concerned court to decide the issue raised before it. **Rule** is made absolute.

15 With these observations, the petition stands dismissed with no

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order as to costs.

16 In view of the dismissal of the petition, the civil application does not survive and is disposed of.

RAJESH
VASANT
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(S. M. MODAK, J.)