

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

WRIT PETITION NO.876 OF 2016

Mr. Shyam Agarwal

..Petitioner
(Judgment Debtor)

Versus

Late Bhikchand Bansilal Mundada
Through his legal heir Smt. Kashalybai
Bhikchand Mundada

..Respondent
(Decree Holder)

Mr. Suhas Rohile i/by Adv. Saurabh Patil, for the Petitioner.
Mr. Ajit Kenjale a/w Mr. Sohil Gulabani, Adv. Sai Kadam, for the
Respondent

CORAM : NITIN W. SAMBRE, J.

DATED : 4th OCTOBER, 2022

P.C.:

1. The petitioner herein filed civil suit no. 199 of 2002 for eviction of the respondent/decreed holder.
2. The said suit was compromised on 19/08/2004 whereby the petitioner/judgment debtor agreed to hand over shop no. 6 in newly constructed building no. 1A (suit shop) to the respondent/decreed holder within a period of six months. Failure to adhere to the time limit, has also been taken care by saddling enhanced compensation of Rs.6,500/- per month as against agreed regular compensation of Rs.5,000/- per month which was

to be paid till the date of handing over suit shop.

3. The decree holder i.e. respondent herein questioned the compromise decree proceedings which has attained finality up to this Court.

4. As the decree was not taken to its logical end, petitioner initiated Dharkast Proceedings being 92 of 2006.

5. After the possession was received by the petitioner, the property under went development. However, since the possession of the suit shop was not delivered to the respondent, Dharkast Proceedings being 97 of 2013 was taken out by the tenant. In the said Dharkast Proceedings application exhibits 19 & 18 are taken by respondent with a prayer for recovery of compensation and also the possession of the suit shop as was agreed in compromise decree dated 19/08/2004. Exhibit 21, an objection to the maintainability of the Dharkast Proceedings was taken by the petitioner/judgment debtor. All these 3 applications are decided by the common impugned order dated 27/11/2014 passed by the Joint Civil Judge Senior Division, Pune. As such this petition.

6. The challenge to the order impugned is based on the following points:

(a) The respondent/decreed holder has resisted the compromise

decree dated 19/08/2004 which has delayed the execution of project. As such, the respondent has no right to claim the compensation.

(b) The other tenants in the project have not vacated their respective premises, as such there is unintentional delay, which fact is not considered by any of the Courts.

(c) The Darkhast Proceedings are not within prescribed limitation.

7. The prayer aforesaid is objected by the counsel for the respondent as according to him the perusal of the terms of the compromise decree dated 19/08/2004 reflects that the possession of the developed property was to be handed over irrespective of the other tenants surrendering possession. According to him, as Executing Court has rightly held that Dharkast Proceedings are well within limitation. His further contentions are, the claim for compensation is based on the terms of the compromise decree and that being so he would urge that the present petition which is devoid of merit is liable to be dismissed.

8. My attention is also invited to the order dated 07/02/2019 passed below Exhibit-59 in aforesaid execution proceedings wherein the order of attachment of immovable property of the

petitioner came to be passed.

9. I have appreciated the said submission.

10. The fact remains that the compromise decree was passed on 19/08/2004 and thereafter the non-applicant/decreed holder has questioned the very compromise decree up to this Court.

11. The compromise decree since was passed on 19/08/2004, the limitation prescribed for the execution of the compromise decree is admittedly 12 years which fact is not disputed. The Dharkast Proceedings were initiated by the non-applicant/decreed holder on 27/11/2012. In this view of the matter, it has to be held that the Dharkast Proceedings initiated by the non-applicant were well within limitation and not time barred.

12. As far as the claim for compensation and possession of the shop vide Exhibits-14 and 18 are concerned, the same are based on the compromise decree. The perusal of the compromise decree in categorical terms provides that the present petitioner has assured to hand over the earmarked portion as shown in the map in the compromise decree to be identified as gala no. 6 admeasuring 180 sq.ft. having saleable 225 sq. ft on lower ground floor. The said developed area was to be handed over within 6 months which admittedly the petitioner/judgment debtor has

failed to.

13. The petitioner has also agreed to pay the compensation of Rs.5,000/- per month for the initial period of 6 months within which the developed property was to be handed over and in case of delay in handing over the possession the compensation to be paid was Rs.6,500/- per month. The fact remains that the failure of the petitioner to honour the commitment in compromise decree has led to filing of Darkhast No. 97 of 2013. In the aforesaid background, it cannot be said that the claim putforth vide Exhibits 14 & 18 is beyond the scope of the compromise decree.

14. Merely because the other tenants have failed to hand over the possession for the purpose of development of the property will not give any liberty to the petitioner to claim that the delay in execution of the project was bonafide. Apart from above, it has to be noted that already the Executing Court has passed an order below Exhibit 59 attaching property of the petitioner for non-compliance of the order of award of compensation.

15. As far as the impugned order passed below Exhibits-14, 18 & 21 are concerned which was passed on 27/11/2014, same was the subject matter of challenge in Civil Revision No.1 of 2015 before the learned District Judge, Pune. The District Judge, Pune by a

speaking order has already dismissed the revision of the applicant thereby holding that there is no error of jurisdiction. The District Judge has dealt in detail the contentions raised by the applicant.

16. In this view of the matter no illegality could be noticed in the impugned order. That being so, the petition fails and stands dismissed.

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(NITIN W. SAMBRE, J.)