

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.331 OF 2022 IN
CONTEMPT PETITION NO.414 OF 2019 IN
WRIT PETITION NO.8568 OF 2018**

Bijalabai Bhaginath Nighote

... APPLICANT

VERSUS

**Hanumant Argunde
The Manager (Land)
Maharashtra State Road Development
Corporation Ltd.**

... RESPONDENT

.....
Mr. M.K. Bhosle, Advocate for applicant
Mr. S.V. Adwant, Advocate for respondent
.....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 6th JANUARY, 2023

ORDER :

The applicant herein has sought review of order dated 30/7/2019 in Contempt petition No.414/2019, whereby this Court directed the respondent to deposit balance amount of Rs.35,58,820/- in the Court of Civil Judge, Senior Division, Vaijapur in Special Civil Suit No.9/2019 within two weeks from the date of the said order. This Court had further observed that the amount deposited by the respondent would be subject to final decision of the suit.

2. Learned counsel for the applicant states that, issuance of such directions is an error apparent on the face of record, in the face of order dated 4/2/2019 in Writ Petition No.8568/2018, and order dated 2/5/2019 in Civil Application No.5730/2019 in Writ Petition No.8568/2018, in which this Court had observed that the petitioner is entitled for the amount as per the sale deed.

3. He has relied on the decision of the Hon'ble Supreme Court in case of **V. Senthur and another Vs. M. Vijayakumar, I.A.S., Secretary, Tamil Nadu Public Service Commission and another (2021 SCC OnLine SC 846)** to contend that, in contempt jurisdiction, it is not permissible for the Court to issue any supplementary or incidental directions which is not found to be in the original judgment and order.

4. Per contra, learned counsel for the respondent states that, the order dated 30/7/2019 is appealable and as such, the Review Application is not maintainable. He further submits that, the respondent had filed an application before the Civil Court. However, the respondent withdrew the said application in view of the order passed in Civil Application. He states that, in the event the order is reviewed, leave be granted to the respondent to file

fresh application for prohibitory orders, as permitted by the order dated 2/5/2019 in Civil Application No.5730/2019.

5. We have perused the record and considered the submissions advanced by learned counsel for the respective parties.

6. The petitioner had filed Writ Petition No.8568/2018 seeking payment of compensation of Rs.78,02,739/- as per the sale deed executed between him and the respondents. Respondent No.3 had claimed that mistake had cropped up in to sale deed that the petitioner was entitled only for an amount of Rs.42,43,919/-. The petition was disposed of by order dated 4/2/2019, wherein it was held that :-

“4. The consideration amount agreed upon in the sale deed binds the parties and the respondents are bound to pay the amount as per the sale deed.

5. In case the respondents feel that there is some error in the sale deed, the remedy is provided under the Specific Relief Act for rectification of the document. Unless the said document is rectified the respondents are bound by it. The respondents, if they are so advised, are entitled to take up appropriate proceedings for the rectification of the sale deed as may be permissible in law. However, till the said sale deed is in force the petitioner is entitled for the amount as per the said sale deed.

6. In case the said sale deed is in force and no other orders are passed by the court of competent jurisdiction with regard to the said sale deed, then the respondents shall pay the amount as per the said sale deed within three months.”

7. The respondent filed an application, Civil Application No.5730/2019 seeking extension of time. The said Civil Application came to be disposed of by order dated 2/5/2019 with observations that :

“4. When we had observed that no other orders are passed by the Court of competent jurisdiction with regard to the sale deed in question, then the respondent shall pay the amount as per the sale deed within three months. By the said order we meant that the parties may get the order from the Civil Court where the Civil Suit is filed with regard to the sale deed and the payment to be made as per the sale deed. The parties may approach to the Court for the prohibitory order with regard to the payment to be made, which naturally the Court would decide it on its own merits.”

8. Being aggrieved by non-compliance of orders dated 4/2/2019 and 2/5/2019, the petitioner filed Contempt Petition No.414/2019. While disposing of the said Contempt Petition, by order dated 30/7/2019, which is under review, this Court observed as under :

“4. Considering these facts, we are of the opinion that by issuing certain directions while maintaining

order dated 04th February, 2019 passed by this Court, interest of both the parties can be protected. It is submitted before this Court that an amount of Rs.42,43,990/ is already paid to petitioner and learned Counsel for petitioner admits this fact. In so far as the remaining amount to the tune of Rs.35,58,820/ is concerned, we direct respondent to deposit this amount in the Court of Civil Judge Senior Division, Vaijapur, wherein Special Civil Suit No.357 of 2019 is filed. This amount be deposited by respondent within two weeks from today. Needless to say that the amount was deposited by respondent subject to final decision of the suit. We further direct learned Civil Judge Senior Division, Vaijapur to decide said suit as early as possible and the parties are directed to cooperate the Court for early decision without seeking unnecessary adjournments in the matter.”

9. It is pertinent to note that, order dated 4/2/2019, records that, unless the sale deed is rectified, the petitioner is entitled for the said amount. In terms of this order, the respondent was liable to pay the amount as per the sale deed within three months in the event the sale deed was in force and no orders are passed as regards the sale deed by the Court of competent jurisdiction. In the subsequent order, this Court has clarified that the parties had to approach the Court, wherein the suit as regards the sale is pending, for an order of payment of money and for the prohibitory order with regard to the payment of amount.

10. As per these orders, the amount was payable to the petitioner subject to prohibitory relief if availed and such orders if so passed by the Civil Court. Whereas by order dated 30/7/2019, this Court has directed the respondent to deposit Rs.35,58,820/- before the Court, subject to the outcome of the suit. In other words, the Court has withheld payment of the amount till the decision in the suit. These directions given in contempt jurisdiction are not in consonance with the original order passed in the Writ Petition. As it has been reiterated by the Apex Court in case of **V. Senthur** (supra), *"There can be no quarrel with the proposition that in a contempt jurisdiction, the Court will not travel beyond the original judgment and direction; neither would it be permissible for the Court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The Court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order."* Hence, in our view, issuance of supplementary directions contained in order dated 30/7/2019 is an error on the face of records and hence, the order to that extent needs to be reviewed.

11. In the circumstances, the Review Application is allowed in terms of prayer clause (A). The order dated

30/7/2019 passed in Contempt Petition No.414/2019 is modified to the extent that the applicant herein is permitted to withdraw the amount deposited by the respondent in Special Civil Suit No.9/2019, with order of the Civil Court. Leave granted to the respondent to file fresh application before the Civil Court for prohibitory order with regard to the payment as per the order dated 2/5/2019, passed in Civil Application No.5730/2019. The Court shall consider the prayer for payment as well as the prayer for prohibitory order on its own merits without being influenced by the observations made in this order.

12. Parties to act on authenticated copy of this order.

(R. M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

fmp/-