

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10824 OF 2017

Mandakini Bhalerao

.. Petitioner

Versus

R.L. Suri

(since deceased) through Legal Heirs and
Representatives

Anil Ram Labhaya Suri & Ors.

.. Respondents

-
- Mr. Suyash More i/by Mr. Rahul Soman for Petitioner
 - Mr. A.M. Saraogi for the Respondents
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2023

P.C.:

1. Heard Mr. More, learned Advocate for Petitioner and Mr. Saraogi, learned Advocate for Respondents for some time. Perused the record and pleadings of the case.

2. Mr. Saraogi, learned Advocate for Respondents, on instructions and with respect to the order dated 30.01.2023 would submit that Respondent No. 2 is present in person.

3. On 30.01.2023, this Court passed the following order:-

1. *Heard Mr. Soman, learned Advocate for Petitioner.*
2. *Perused the impugned order dated 21.02.2015 passed in Execution Application No.259 of 2006 in Suit No.4772 of 1995. The said order is at Page No.99 of the Writ Petition.*
3. *The facts in the present case are gross and need to be mentioned. The predecessor in the title of the Respondent filed the Original suit against the Petitioner in the learned Trial Court. In that suit Consent Terms were arrived at between the parties under which Petitioner was*

required to construct the suit building and hand over 40% of the constructed area to the predecessor-in-title of the Respondent. After the consent terms were executed, the original Respondent refused to comply with his obligation because of which Petitioner filed the fresh suit. However, the said suit was ultimately withdrawn by the Petitioner and Execution Application was filed before the Executing Court in view. In that Execution Application the impugned order has been passed holding that the proceedings stood abated automatically under law.

4. That apart, there was a delay in filing the proceedings and the Application for seeking condonation of delay did not mention the period of delay as also the reasons for the same. Since none was present for the Applicant, the Chamber Summons came to be dismissed and consequently, the Execution proceedings also stood dismissed.

5. In the above background Mr. Soman would now submit that the suit building is fully ready. He would further submit that the Petitioner is in occupation of the entire suit building and subject to compliance of obligations by the successors-in-title of the Original Respondent, the Petitioner would also be in position to fulfill his obligations. Mr. Soman would further submit that delay would not affect filing of the Execution proceedings.

6. In that view of matter, Issue notice to Respondents. Humdast permitted. In addition to Court's notice Petitioner is directed to serve Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving notice, Respondents to file affidavit-in-reply, if any, and serve on Petitioner on or before the next date.

7. It is clarified that if Respondents do not remain present on the next date, this Court shall be constrained to pass appropriate orders for disposal of the Writ Petition.

8. Stand over to 13th February, 2023."

4. In view of the directions contained in paragraph No. 5 of the order passed above, Mr. Saraogi, learned Advocate for Respondents would submit that in so far as the mutual obligations of both the parties are concerned, nothing remains to be complied with as on date. Undoubtedly, Petitioner's submission that the delay would not affect the filing of the execution proceedings has been kept open and any action taken by the Petitioner in execution shall be dealt with strictly in accordance with law.

5. All contentions of the parties are expressly kept open in any proceedings that may be filed.

6. In view of the above, after hearing the parties, it is seen that the impugned order dated 21.02.2015 passed in Chamber Summons No. 173 of 2008 in Execution Application No. 259 of 2006 would not survive especially in view of the fact that pursuant to the order passed in execution proceedings, fresh consent terms were entered into by the parties.

7. In view of the above, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
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