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

WRIT PETITION NO.4030 OF 2021

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City Industrial Development
Corporation CIDCO Bhavan

... Petitioner

V/s.

Chunilal Navji Rajput

... Respondent

Mr. Gopal Krishna S. Hegde, Senior Advocate with Ms.
Pinky Bhansali for the petitioner.

Mr. Rajesh Datar for the respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

PC.:

- 1.** The writ petition is directed against the order dated 2 August 2016 passed below Exhibit 20 and the order dated 12 November 2018 passed in Execution Petition No.6 of 2023.
- 2.** The petitioner is the original judgment debtor, and the Respondent is the decree-holder.
- 3.** On the basis of the scheme of allotment of alternative plot under the M.R.T. Scheme, the Respondent was eligible for a 100 square meter plot. The petitioner denied the claim of the Respondent for allotment of an alternative plot. Therefore, Respondent filed Civil Suit No.616 of 1997 on 22 January 1998. The said suit was decreed on 22 January 1998.

4. Respondent filed an execution petition for enforcement of the decree. During the pendency of execution on 3 November 2006, the petitioner issued an allotment letter to the Respondent, subject to payment of Rs.3,125/- per square meter before 12 January 2007. According to the Respondent, he received such a letter on 3 April 2007. Since there was a failure on the part of the Respondent to pay the amount, the petitioner, on 5 October 2007, issued another letter to the Respondent calling upon him to pay the revised rate prevailing in the year 2006-2007 in two instalments of Rs.2,18,750/-.

5. The Respondent, therefore, filed an application on 3 November 2007 seeking direction against the petitioner to allot the plot by accepting the market price on the date of passing of the decree. The Executing Court, by order dated 2 August 2016, directed the Respondent to pay the amount mentioned in the allotment letter dated 3 November 2006 within two months. Accordingly, Respondent, on 27 September 2016, submitted a cheque dated 16 August 2016 for Rs.3,12,500/-.

6. On 8 February 2018, the petitioner filed an application for dismissal of the execution petition and for recall of the order dated 2 August 2016. The Executing Court rejected the application vide order dated 12 November 2108. Both orders dated 2 August 2016 and 12 November 2108 are the subject matter of challenge in the present writ petition.

7. Learned Senior Advocate for the petitioner submitted that the decree under execution, being a declaratory decree, is not

executable. There is no order to deliver the plot in favour of the Respondent, and the Respondent needs to file a separate suit to get relief of delivery of possession. He submitted that the Letter of Offer dated 3 November 2006 was handed over to the bailiff, which is deemed service on the Respondent. Moreover, on 4 April 2007, the Respondent acknowledged receipt of the Offer Letter dated 3 November 2006. According to him, the power to prescribe a revised rate by subsequent Offer Letter dated 21 September 2007 is derived from the New Bombay Land Disposal Regulations, 1975, as well as the amended Navi Mumbai Land Disposal Regulations, 2008. The Regulations provide for the manner of disposal of lands, and the revised offer is based on said Regulations.

8. Per contra, the learned advocate for the Respondent submitted that the decree under execution is executable in nature. According to him, the objection to the executability of the decree was not raised before the Trial Court; therefore, the petitioner is precluded from raising such an objection for the first time in this court. According to him, the Respondent was always ready and willing to pay the amount at the market rate as was in existence on the date of passing of the decree. Accordingly, he has deposited the amount as per order dated 2 August 2016 with the Executing Court. He, therefore, submitted that the writ petition deserves to be dismissed.

9. In so far as the first contention raised by the petitioner about the decree under execution being a declaratory decree, it is necessary to consider clause (2) of the decree, which reads thus:

“2. It is hereby declared that the plaintiff is entitled to allotment of plot on the terms and conditions as per the scheme of the defendant corporation.”

10. It is true that, generally, declaratory decrees are inexecutable. However, whether a decree is executable depends on the language and scope of the decree or of that particular part of the decree in respect of which the question arose. It is not always that the decree of the court for being executable actually provides for their being enforced in execution. Where a decree directs the defendant to pay some money to the plaintiff, it is executable from its very nature, and one does not expect a provision in the decree that it shall be enforced in execution. That may be so in a plain case, and it may be an unambiguous case. A provision of the Code removes the ambiguity and solves the difficulty. However, when no such provision exists, it is difficult to decide whether a particular part of the decree is executable. Its executability also depends on the intention of the decree to be gathered from issues framed and reasoning in the judgment. In the facts of a particular case, part of the decree may be declaratory, and part may be directory. While interpreting such a decree, in the case of two interpretations possible, the interpretation favourable to the decree-holder should be adopted. Such decree must also be interpreted, upholding the principle of forbidding the multiplicity of suits.

11. Having considered clause (2) of the decree, in my opinion, though the clause starts with the expression "It is hereby declared that", however, by subsequent part of the order, it is held that "the plaintiff is entitled to allotment of plot on the terms and conditions

as per the scheme of the defendant corporation." In my opinion, the second part of clause (2) is a directory which needs to be complied with by the Executing Court. Moreover, the reasoning in the judgment supports Decree Holder's interpretation that the court passing the decree intended to confer relief of allotment to Decree Holder.

12. In so far as the contention raised by the Learned Senior Advocate about non-payment of market price by the Respondent as per the first offer dated 3 November 2006 is concerned, in my opinion, the present case needs to be considered in the context of Order 21 Rule 2 of the Code of Civil Procedure, 1908. The Apex Court, in paragraph 32 in **Sultana Begum v. Prem Chand Jain** reported in (1997) 1 SCC 373 has held that it is no doubt open to the parties to adjust or compromise third parties under the decree. However, if it amounts to an adjustment of the decree, it must be reported to the court, whose duty is to execute it so that the court may record or certify it. If it is not done, the court before whom the execution proceedings are initiated will proceed to execute the decree. It is held that for any adjustment of the decree which has the effect of partial or fully satisfying, the decree needs to be certified by the Executing Court under Order 21 Rule 2. If such certification is not done, Order 21 Rule 2(3) prohibits the Executing court from giving effect to the plea of adjustment outside the execution petition.

13. Therefore, in my opinion, the plea of non-compliance with the communication of the letter dated 3 November 2006, if accepted, would amount to adjustment of the decree without

certification by the court and accepting judgment debtor's contention that the Respondent has not paid as per Offer Letter dated 3 November 2006 has given up his right to execute the decree.

14. I have, therefore, no hesitation in holding that the petitioner was bound to comply with the Offer Letter dated 3 November 2006 and the Executing Court, having passed an order giving effect to the Offer Letter dated 3 November 2006, shall not commit the error of jurisdiction by passing the impugned order.

15. In so far as the judgment in the case of **Shivshankar Gurgar v. Dilip** reported in AIR 2014 SC 1182 is concerned, in the facts of the case, the parties, while entering into a compromise decree, had agreed to pay the amount within six months. The question which arose before the Apex Court was in the context of the power of the Court under Section 148 of the Code of Civil Procedure, 1908, to extend the time. In the facts of the present case, no period was prescribed by the court passing the decree. Therefore, Section 148 of the Code of Civil Procedure, 1908, is inapplicable in the facts of the present case. Hence, the judgment in **Shivshangar Gurgar's** (supra) case has no application.

16. In so far as the judgment in the case of **Radha Rajak alias Radhika Raja & Ors. v. Balmiki Devi & Ors.** reported in AIR 1998 Patna 175 is concerned, there cannot be a dispute about the legal proposition of law that the Executing Court cannot be behind the decree. In the facts of the case, the said judgment has no application.

17. In so far as the judgment in the case of **Rameshwar Dass Gupta v. State of U.P. & Anr.** reported in (1996) 5 SCC 728 is concerned, the execution sought under Order 21 Rule 1 of the Code of Civil Procedure, 1908 by the execution petitioner was beyond decree. The Tribunal had directed confirmation and consequential promotion along with the consequential benefit of salary and pension. However, the execution petitioner claimed interest in the salary. The Apex Court held that the decree did not provide for payment of interest. Hence, it was held that the Executing Court travelled beyond the decree by directing interest. In the facts of the case, the Court passing decree has held that the plaintiff is entitled to plot on terms and conditions as per the scheme. Therefore, the judgment has no application.

18. On overall consideration of the reasons assigned, in my opinion, there is no error of jurisdiction. The writ petition accordingly stands dismissed. No costs.

19. The learned advocate for the petitioner seeks continuation of the ad-interim relief however, considering the facts of the case, request of continuation of ad-interim relief is rejected.

(AMIT BORKAR, J.)