



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12554 OF 2022

Madhuri P. Baldota and Ors. ... Petitioners.
Versus
M/s. Cafe VJTI College Mumbai ... Respondent.

Mr. J.S. Kini a/w Mr.Aum Kini i/by Ms.Sapna S. Krishnappa,
Advocate for the Petitioners.
Ms. Snehal Modi, Advocate for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 07, 2023.

P. C. :

1. The challenge in the Petition is to the order dated 21st April, 2022 passed by the Appellate Court in Revision No.23 of 2020, setting aside the order of the trial Court in Execution Application No.249 of 2017 and dismissing the Execution Application as barred by limitation.

2. Briefly stated the facts of the case are in Writ Petition No.1180 of 2004 filed in this Court challenging the order of the Appellate Bench dismissing the Appeal against the decree of RAE and R Suit No.1373/4951 of 1982, consent terms dated 26th July, 2004 were executed between the parties. As per the consent terms the

parties agreed that the petitioner-original defendant shall retain 300 sq.ft. area marked in blue portion annexed to the consent terms and shall handover the possession of the balance premises to the respondent-original-plaintiff on or before 15th August, 2004.

3. Subsequently, possession of an area admeasuring 310 sq.ft was handed over to the petitioner. Misc. Notice No.644 of 2004 came to be instituted by a third party-Umashankar Tiwari for restoration of possession of his pan-shop of which, according to the third party-applicant, forcible possession was taken by the respondent herein. This Application came to be allowed on 11th March, 2015 directing restoration of possession to third party applicant. As the Application came to be allowed, the decree was put into execution on the ground of non-compliance of the consent terms.

4. The trial Court in the Execution Application vide order dated 24th September, 2019 issued the possession warrant on the ground that the respondent had failed to comply with the consent terms. The respondent filed Revision Application before the Appellate Court, which dismissed the execution proceedings on the ground of limitation.

5. Heard Mr. Kini, learned counsel appearing for the

Petitioners and Ms. Modi, learned counsel appearing for the Respondent.

6. Learned counsel appearing for the Petitioners submits that consent terms provided that the possession would be handed over to the Petitioners on or before 15th August, 2004, failing which the decree could be put in execution. He submits that only area of 270 sq.ft. was handed over. He submits that the decree became enforceable only upon the possession being directed to be restored to the third party Applicant in Misc. Notice No.644 of 2004 by the order of 11th March, 2015. He submits that the period of limitation would therefore commence from 11th March, 2015 and as such, the Execution Application was not barred by the law of limitation.

7. *Per contra*, learned counsel appearing for the Respondent points out the relevant findings of the Appellate Court that the period of execution was not extended by virtue of the consent decree. She would further submit that subsequently, in the appellate proceedings, the possession was recovered from the third party Applicant and as such, there is compliance with the consent terms. She would further submit that decree-holder was required to construct the wall dividing 300 sq.ft. area and while doing so reduced the respondent's area to

270 sq.ft. for which they had filed execution proceedings.

8. Considered the submissions and perused the record.

9. By the consent terms, Respondent herein had agreed to handover possession of premises admeasuring 310 sq.ft. to the Petitioners on or before 15th August, 2004. Admittedly, the consent terms were complied with inasmuch as, the possession was handed over however, the contention is that the possession was handed over by forcibly dispossessing third party applicant. Even if that were to be so, there was compliance of the consent terms as the possession of 310 sq.ft. as provided in the consent terms was handed over.

10. In the year 2004, Misc. Notice No.644 of 2004 was filed seeking restoration of possession. That being so, the Petitioners were well aware of the proceedings being filed as the Petitioners were also party to the proceedings. It is at that time, as an obstruction was created, and if it is construed that the possession was not handed over that cause of action to enforce the consent terms arose. The execution application, if any, had therefore to be filed within a period of twelve years from the date of filing of the application by third party applicant. It was not necessary for the Petitioners to wait till the adjudication of the Misc. Notice taken out by the third party

Applicant to enforce the terms of the consent terms. It is on default occurring at the first instance that as per the consent terms, decree was required to be put into execution.

11. The admitted position today is subsequently the possession of the premises has been restored to the Petitioners and despite thereof the application for execution has been filed seeking execution of the decree which is nothing but vindictive application. All that the consent terms required that the Respondent hands over the possession of 310 sq.ft. That being done, the subsequent proceedings if any instituted by the third party cannot extend the period of limitation as rightly held by the Appellate Court. The execution application filed in November, 2016 was clearly barred by limitation.

12. In that view of the matter, there is no infirmity in the impugned order. Petition is dismissed.

(Sharmila U. Deshmukh, J.)