

VRJ

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

WRIT PETITION NO.4361 OF 2017

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Panchavati Cooperative Housing Society
Ltd

... Petitioner

V/s.

Saraswatiben Prataprai Bhatt & Ors.

... Respondents

Mr. Yogeshkumar P. Yagnik for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 29, 2023

P.C.:

1. The petitioner is challenging order passed by the executing Court dismissing execution application on the ground that in the different suit filed by an individual flat purchaser and petitioner, the suit was dismissed for default hence the society is not entitled to seek conveyance of whole building.

2. The petitioner original plaintiff filed S.C. Suit No.1859 of 2012 seeking a relief of enforcement of obligations cast under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

3. The Trial Court, by judgment and decree dated 18th March 2013, decreed the suit directing the defendants to execute deed of conveyance within four weeks from the date of order, failing which

the petitioner was granted liberty to get conveyance executed through Officer of City Civil Court, Dindoshi, Mumbai.

4. Since the defendants failed to execute conveyance as per the decree, the petitioner filed Execution Application No.68 of 2013. The executing Court issued notice under Order 21 Rule 22 of the Civil Procedure Code, 1908 but the judgment debtors were not found at the given address. The executing Court relying on order passed in different suit filed by the petitioner-society bearing No.1859 of 2012, held that the society could not have filed subsequent suit in view of bar under Order 9 Rule 9 of the Civil Procedure Code, 1908. It was held that said suit was based upon agreement with individual flat holder for flat No.7 and, therefore, deed of conveyance cannot be executed in respect of whole building.

5. The petitioner has, therefore, filed present writ petition.

6. This Court, on 26th April 2017, issued notice to the respondents. Office remark dated 29th September 2017 indicates that respondent No.1 to 10 are duly served as per bailiff report. Despite service, none appears for respondent Nos.1 to 10.

7. On perusal of the reasoning assigned by the executing Court for dismissing executing application, in my opinion, the reasoning is bordering perversity. The reasoning is contrary to well settled principle of law that it is not open for the executing Court to go behind the decree. The decree passed by the City Civil Court on 18th March 2013 is clear and unambiguous. The rights conferred by the decree can only be modified by an agreement between the

parties certified by executing Court under Order 21 Rule 2 of the Civil Procedure Code, 1908. Except such agreement certified under Order 21 Rule 2 of the Civil Procedure Code, 1908, there is no other power available with the executing Court to take cognizance of any other event to take away effect of decree passed by competent Court.

8. Passing of decree in another suit filed by the society cannot extinguish rights created under decree dated 18th March 2013. Therefore, the executing Court was not justified in dismissing the execution application. Hence, following order:

- a) The impugned order dated 16th June 2016 passed in Execution Application No.68 of 2013 is quashed and set aside.
- b) Execution application No.68 of 2013 is restored on the file of executing Court.
- c) The executing Court shall finally decide the execution application within three months from the date of appearance of the petitioner.
- d) The petitioner shall appear before the executing Court on 18th December 2023.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)