Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1716 OF 2014

Ashok Tatyasaheb Patil ... Petitioner
V/s.
Jayawant Tatyasaheb Patil ... Respondent

None for the petitioner.
Mr. Nagesh Y. Chavan for respondent.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 28, 2024

P.C.:

1. The petitioner, a decree-holder, filed Regular Darkhast No. 273 of 2012 for execution of a compromise decree passed in Special Civil Suit No. 17 of 2008, which was decided on 8th July 2008. The decree mandates specific obligations on both parties, particularly regarding the possession of the suit property and payment of Rs. 60,000/- by the petitioner to respondent No. 1 within a stipulated time frame.

2. As per Clause 3(a) of the compromise decree, respondent No. 1, who was in possession of the suit property, was required to hand over possession of the property to the petitioner within one year from the date of payment of Rs. 60,000/-. The said clause explicitly required the petitioner to deposit the amount of Rs. 60,000/- in the month of May 2009. The clause also provides that in case the petitioner fails to pay the amount within the stipulated period, respondent No. 1 shall have a corresponding right to recover the amount.

3. The learned advocate for the respondent argued that respondent No. 1 had made improvements to the suit property during their possession. The improvements, it was submitted, should be considered by the Executing Court while adjudicating the dispute under Section 47 read with Order 21, Rule 101 of the Code of Civil Procedure, 1908. These provisions empower the Executing Court to decide all questions relating to the execution, discharge, or satisfaction of the decree and to adjudicate rights of parties in resistance or obstruction during execution.

4. On a plain reading of Clause 3(a) of the compromise decree, it is evident that the clause provides a clear consequence for the non-payment of Rs. 60,000/- within the stipulated time. The clause explicitly confers a right upon respondent No. 1 to recover the amount while retaining possession of the suit property. Further, the clause obligates respondent No. 1 to deliver possession of the suit property only upon payment of Rs. 60,000/-. This establishes a reciprocal obligation where the petitioner must fulfill their monetary obligation to trigger the respondent’s duty to deliver possession.

5. Importantly, the respondent has not suffered any prejudice due to the petitioner’s delay in making the payment of Rs. 60,000/-. As per the terms of the decree, respondent No. 1 has continued to enjoy possession of the suit property during the intervening period. This uninterrupted possession ensures that the respondent has neither been dispossessed prematurely nor denied their rights under the decree. The decree, therefore, strikes a balance between the petitioner's right to seek possession upon payment and the respondent's right to retain possession until payment is made.

6. The principle of equitable restitution applies in such circumstances, ensuring that neither party is unjustly enriched or prejudiced. While the petitioner retains their right to enforce the decree by making the payment, respondent No. 1 enjoys the benefit of possession until the petitioner fulfills this obligation. This mutual safeguard ensures that the delay in payment by the petitioner does not amount to an inequitable outcome for either party.

7. The Executing Court's interpretation that the petitioner's failure to deposit the amount in May 2009 permanently disentitles them from executing the decree disregards this aspect. The terms of a decree must be enforced in their entirety, and the Executing Court cannot add conditions or go beyond the decree. By requiring payment as a precondition for possession, the decree inherently protects the respondent's interests until the petitioner complies with their obligation.

8. Additionally, it is well established that the delay in payment of Rs. 60,000/- by the petitioner cannot prejudice their substantive right to seek execution, particularly when the decree itself provides a remedy for delayed payment. The respondent's continued possession ensures that they are not disadvantaged during the period of non-payment. The petitioner, by tendering the amount along with interest as directed by this Court, would remedy the delay and ensure compliance with the decree's terms.

9. Moreover, it is well settled that a compromise decree operates as a contract between the parties, and the terms agreed therein must be given effect in their entirety. The Executing Court cannot add conditions or read implied terms into the decree beyond what is explicitly agreed upon by the parties. It well settled that the Executing Court is bound by the terms of the decree and cannot go behind or beyond the decree while interpreting or executing it. Thus, the Executing Court's interpretation that the petitioner's failure to deposit the amount in May 2009 permanently disentitles them from executing the decree is untenable in law.

10. Additionally, the reliance by the Executing Court on the 4-year delay in filing the execution petition as a ground for dismissal is misplaced. The petitioner filed the execution petition well within the prescribed limitation period of 12 years under Section 48 of the CPC and Article 136 of the Limitation Act, 1963, making the objection on grounds of delay unsustainable.

11. Furthermore, the purpose of execution proceedings is to ensure that a decree-holder receives the fruits of the decree. Denying execution on procedural grounds would frustrate the intent of the decree and undermine the principles of justice and equity. The executing court must act in a manner that furthers the enforcement of rights under a decree, rather than creating technical hurdles.

12. Lastly, the provisions of Section 47 of the CPC, which allow the Executing Court to decide all questions relating to the execution, discharge, or satisfaction of the decree, must be applied within the confines of the decree’s express terms. The court's role is limited to interpreting and implementing the decree, not to adjudicate new disputes or introduce extraneous considerations unless explicitly raised and permitted under Order 21, Rule 101 of the CPC. The alleged improvements made by respondent No. 1, therefore, are ancillary considerations that cannot override the fundamental obligation to deliver possession upon payment by the petitioner.

13. Thus, the impugned order of the Executing Court dismissing the execution petition on grounds of delay and interpreting the decree against the petitioner is unsustainable in law and equity. The impugned order dated 1st August 2013, therefore, suffers from material irregularity and cannot be sustained. Hence, following order:

ORDER

(a) Regular Darkhast No. 273 of 2012 is restored to the file of the Joint Civil Judge, Junior Division, Sangli for further adjudication in accordance with law.

(b) The petitioner is directed to deposit the sum of Rs. 60,000/- along with interest at the rate 10% per annum from May 2009 within 8 weeks from the date of this order. In the event of failure to deposit the said amount within the stipulated period, the execution petition shall stand dismissed without further reference to the Court, and the order dated 1st August 2013 shall stand revived.

(c) Upon payment of the aforesaid amount, the decree shall be executed strictly as per its terms.

(d) The Executing Court shall ensure that any claim for improvements made by respondent No. 1, if raised, is adjudicated strictly within the framework of Section 47 read with Order 21, Rule 101 of the CPC.

14. The writ petition is accordingly disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)