

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 196 OF 2017

Smt. Kuldeepkaur Prabhujiyotsingh Walia

...Appellant.

Versus

Shri. Vikas Hansraj Nisar and Others.

...Respondents.

Ms. Sandhya A. Mailagir i/b Mr. Anil D. Joshi for the appellant.

Coram : Sharmila U. Deshmukh, J.

Date : February 2, 2024.

P. C. :

1. Being dissatisfied with the judgment dated 5th March 2016 passed by the appellate Court dismissing the appeal thereby confirming the judgment and decree passed by the Joint Civil Judge, Junior Division, Thane in Special Civil Suit No. 768 of 2006, the original defendant no.1 is before this Court.

2. Special Civil Suit No. 786 of 2006 was instituted by the plaintiff seeking recovery of sum of Rs.7,34,439/- against the defendants. It was pleaded that the plaintiff was searching for industrial premises for the purpose of expansion of their business and approached defendant no.1 for the sale of subject industrial shed. After negotiations, the open space admeasuring 961.50 sq. meters along

with the structure standing thereon was purchased by the plaintiff from defendant no.1. Defendant no.2 is the husband of defendant no.1 and proprietor of M/s. Kartar Processors, who was in possession of the structure standing over the suit property which was surrendered in favour of defendant no.1 in the month of July 2003.

3. The plaintiffs have come with the case that when they commenced the manufacturing activity in the suit property, the electric supply was disconnected by the Maharashtra State Electricity Distribution Company Limited [for short "the MSEDCL"] as there were arrears of electricity charges. Upon inquiry, the duplicate bills drawn in the name of M/s. Kartar Processors for payment of arrears were handed over by the MSEDCL. As the defendants did not clear the arrears, a notice came to be issued to defendant no.1 at her current address but it was not accepted by defendant no.1. It is the case of plaintiff that they settled the matter with the MSEDCL and paid a total amount of Rs.5,05,663/- as one time settlement as also the municipal taxes and property taxes of Rs.51,000/- and as such raised a claim of Rs.6,47,083/- from the defendants.

4. The suit came to be resisted by the defendants. The contention was that the bills for arrears of electricity charges were issued in the name of M/s. Kartar Processors and defendant no.2 was proprietor of

the same, however defendant no.2 never authorised the plaintiff to deal with the MSEDCL or to pay the arrears of electricity charges. It was further pleaded that there is no privity of contract between the plaintiff and defendant no.2. and therefore no amount can be recovered from defendant no.2 towards the electricity charges.

5. Parties went to trial and the trial Court after considering the evidence on record decreed the suit against the defendant no.1. As against the judgment of trial Court, Regular Civil Appeal No. 281 of 2012 was filed by defendant no.1 which came to be dismissed with costs.

6. Heard learned counsel appearing for the appellant.

6.1. Learned counsel for the appellant submits that as per conveyance-deed between plaintiff and defendant no.1 there is no agreement to discharge any liability of either party to the deed. She further submits that it was the firm of M/s. Kartar Processors which was required to discharge the liability of the MSEDCL and the appellant, i.e., the original defendant no.1 is not liable to pay the arrears of electricity charges of M/s. Kartar Processors.

7. It is not disputed that there were arrears of electricity bills due and payable to the MSEDCL. The issue which arises is whether

defendant no.1 is liable to pay the arrears of electricity charges on behalf of M/s. Kartar Processors. It is not disputed that defendant no.2 is the proprietor of M/s. Kartar Processors and husband of defendant no.1. The execution of conveyance deed in the year 2005 is also not disputed.

8. The appellate Court has held that in the month of July 2003 defendant no.2 surrendered the structure of M/s. Kartar Processors in favour of defendant no.1 and as such defendant no.1 was the exclusive owner of property. The appellate Court in view of the factual position has held that as the conveyance has been executed by defendant no.1 in favour of the plaintiff, the liability cannot be denied by defendant no.1 as the defendant no.2 as proprietor of M/s. Kartar Processors has surrendered the structure in favour of defendant no.1 in the month of July 2003.

9. Considering that the execution of conveyance has not been disputed between the parties, the liability as regards the past arrears of electricity bills cannot be foisted on the purchaser. Even if the dues were of defendant no.2 – M/s. Kartar Processors, the fact remains that the structure had been surrendered by defendant no.2 in favour of defendant no.1 and as the conveyance has been executed by defendant no.1 in favour of the plaintiff, the liability is upon

defendant no.1 to clear the arrears. Even if there is no such recital in the conveyance deed, the provisions of section 55 of the Transfer of Property Act, 1882 come into play which enjoins upon the seller to pay all public charges due in respect of the property upto the date of sale. It is open for defendant no.1 to initiate the proceedings against defendant no.2 for recovery of the amount paid. However, it cannot be denied that the subsequent purchaser of property cannot be foisted with the financial burden of past arrears of erstwhile occupiers of the property.

10. Considering the concurrent findings of fact, there is no substantial question of law which arises in the present case. The submissions of learned counsel appearing for the appellant would require this Court to re-appreciate the evidence on record, which is impermissible under section 100 of the CPC. The appeal is devoid of merits and is dismissed.

11. In view of the disposal of second appeal, civil/interim application(s) taken out in this appeal, if any, does not survive and the same is disposed of.

[Sharmila U. Deshmukh, J.]