

Ajay

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

WRIT PETITION NO. 1261 OF 2024

Subodh Atmaram Pandit and Anr.

.. Petitioners

Versus

Mangala A. Pandit and Ors.

.. Respondents

-
- Mr. Vikram Walawalkar, Advocate i/by Mr. Viren Tapkir a/w. Ms. Sayali Gangal and Iqra Qureshi, Advocates for Petitioners.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024.

P.C.:

- 1.** Heard Mr. Walawalkar, learned Advocate for Petitioner.
- 2.** Present Writ Petition takes exception to the impugned order dated 06.08.2012 passed by the learned City Civil Court in Review Petition No.14 of 2011 which is at Exhibit "I" - page No.103 of the Writ Petition.
- 3.** There is a brief history which is required to be narrated for disposal of the present Writ Petition. Petitioners before me are the Defendants in SC Suit No.917 of 1990. That Suit was filed by the Plaintiffs for injunction. During pendency of the Suit, it appears that there may have been interlocutory orders passed especially because Court Commissioner was appointed and the present Review Petition in which the impugned order is passed concerns the same. Perusal of

pleadings show that the Court Commissioner was infact appointed and he had in the interregnum locked and sealed the Suit premises.

4. On 09.08.2004, learned Trial Court dismissed the Suit on the ground that Advocate for the Plaintiffs was present, but could not lead any evidence under Order XV Rule 1 of the Code of Civil Procedure, 1908 (for short “**the CPC**”). *Prima facie*, Application of Order XV Rule 1 of the CPC at a stage after almost 12 years can never arise. Be that as it may, the Suit is dismissed on record.

5. In 2011, Plaintiffs, rather legal heirs and the successor-in-title of the original Plaintiffs realised the above and filed Notice of Motion No.660 of 2011 for seeking a direction to the Court Commissioner to unlock and unseal the Suit premises and restore the possession of the same to the Plaintiffs. Defendant No.1 incidentally also filed an Application under Exhibit “5” before the learned Trial Court on being served with Notice of Motion No.660 of 2011. Both these Applications were heard together and order dated 01.10.2011 was passed. While perusing that order, it is revealed that during the pendency of the original Suit, Notice of Motion No.1609 of 1990 was heard alongwith Notice of Motion No.640 of 1990 wherein Court Commissioner was appointed and the premises were sealed. Maintainability of the Motion in 2011 at Exhibit “5” is also not understood when the Suit stood dismissed for default.

6. In view of the fact that the learned Trial Court directed that the Suit premises should be locked and sealed by the Court Commissioner, the order dated 01.10.2011 incidentally reproduces in paragraph No.25 the order of appointment of Court Commissioner and the reasons for locking and sealing of the Suit premises. Suit premises in the present case are Room No.35 and Room No.36 in Dattatraya Building, Tukaram Javji Road, Grant Road, Mumbai. While passing the order dated 01.10.2011, learned Trial Court observed that the Suit had already been disposed of for want of prosecution long back and in that view of the matter, the Court Commissioner shall now be discharged, rather he will undo what he did as per the directions passed by the learned Trial Court earlier. In that view of the matter, what the learned Trial Court directed while disposing of Notice of Motion No.660 of 2011 was that the Court Commissioner was directed to unlock and unseal the Suit premises in the presence of the parties after issuing notice to them.

7. Since the order dated 01.10.2011 did not give any absolute relief or succour to the parties concerned, the successors-in-title of the original Plaintiffs filed Review Petition No.14 of 2011 seeking review of the order dated 01.10.2011. At this juncture, I need to observe that Notice of Motion No.660 of 2011 as also Application below Exhibit "5" which came to be decided by the order dated 01.10.2011 were itself not maintainable in the first instance. It is shocking and surprising as

to why these Applications were entertained when the original Suit was dismissed by order dated 09.08.2004 and even the Review Petition was not maintainable.

8. In the Review Petition, the successors-in-title of the original Plaintiffs sought specific directions to the effect of seeking handing over possession of Room No.35 and to unlock and unseal the middle door between Room No.35 and Room No.36 in the dismissed Suit. Shockingly this has been allowed.

9. Perusal of the impugned order reveals that there was a dispute pending between the parties in the Small Causes Court with respect to tenancy of Room No.35. There are several observations made after hearing the parties in the Review Petition order with respect to the decree passed by the Small Causes Court as also entitlement of the original Plaintiffs and the original Defendants to occupy Room No.35 as well as Room No.36.

10. It also records that Defendant No.1 had filed Suit in the Small Causes Court which was dismissed on 04.09.2022 and nothing happened thereafter. Thereafter Application was moved by Defendants to get possession of Room No.35.

11. In the above background and facts of the case, order dated 01.10.2011 has been reviewed by the learned Trial Court and the Court Commissioner was directed to unlock and unseal the Suit

premises in the presence of both the parties after giving notice to them and hand over possession of Room No.35 in favour of Plaintiffs / Review Petitioners. This particular direction is taken objection to by the original Defendant No.1 and his wife.

12. What is contended by the Writ Petitioner to challenge the order dated 06.08.2012 in the present Writ Petition filed in 2024 cannot be a remedy to challenge the order. I am not inclined to accept the submissions advanced by Mr. Walawalkar and the same are stated to be rejected at this belated stage in such disputed facts.

13. In the first place, if any order was required by any of the aggrieved parties to the original Suit proceedings which came to be disposed, rather dismissed by order dated 09.08.2004, it was incumbent upon the such parties to approach the Trial Court, rather than file a Writ Petition.

14. Both parties involved in the present case have failed to do so, rather they chose a novel procedure of filing a Notice of Motion in a dismissed Suit (for default ofcourse) to determine adjudication, rather execution of the Suit property itself. Such a course of action is infact impermissible in law for either of the parties. This does not stop here. Parties filed further Review Petition wherein a direction was given to the Court Commissioner to hand over possession of the property to the Plaintiffs / Petitioners without adjudication or decree

which is now objected to by the original Defendant No.1 and his wife.

15. The aforesaid narration is done by this Court only to bring forth the issue of clear disputed questions of facts between the parties. Today, Mr. Walawalkar would inform the Court that the necessity of filing the present Writ Petition has arisen because the concerned building i.e. Dattatray Building is now going in for redevelopment and therefore ascertainment of the right of parties, viz their right, entitlement and interest in Room No.35 and Room No.36 is required to be adjudicated. Incidentally, there is no explanation for the enormous delay in filing such a Writ Petition with regard to completely disputed questions of facts. However, Mr. Walawalkar, has fairly admitted the issue of delay as also disputed questions of facts.

16. I am not inclined to entertain this Writ Petition since the Writ Court cannot be used as a medium by parties to settle personal scores wherein the remedy of the parties lies in the Civil Court in appropriate proceedings. Without expressing any opinion on merits, the Writ Petitioners, if so desire can move the appropriate Civil Court having Original Civil Jurisdiction after taking advice and take out any appropriate proceeding, if so permissible in law with respect to the Suit property and can seek reliefs.

17. Mr. Walawalkar, on instructions obtained from Defendant No.1 who is present in Court would submit that the operative part of

the directions contained in the order dated 06.08.2012 directing the Court Commissioner to hand over possession of Room No.35 to the Plaintiffs has not been effected till date. If that is so, then the Petitioners can act fast and file appropriate proceedings as available to them in law and if so permissible.

18. Be that as it may, it shall be open to the Defendants to adjudicate all their rights in appropriate Civil proceedings as available to them in law.

19. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.02.06
09:51:45 +0530