

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6 OF 2024

Panju Mahal CHS Ltd

.. Petitioner

Versus

Panju Sons & Ors.

.. Respondents

.....

- Mr. Rumi Mirza a/w Mr. Kaushal Thakker i/by Dipesh Mehta & Associates for Petitioner
- Mr. Atul Damle, Senior Advocate i/by Mr. Manoj Nikose for Respondent No. 9

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 12, 2024

P. C.:

1. Heard Mr. Mirza, learned Advocate for Petitioner and Mr. Damle, learned Senior Advocate for Respondent No. 9.

2. This Writ Petition takes exception to the order dated 04.07.2023 passed in Darkhast No. 161/2019 in SC Suit No. 2717/1999 rejecting the Application filed under O. XXI, R. 22 of the CPC seeking execution of the decree passed in favour of the Plaintiff / Decree Holder i.e. the Co-operative Housing Society with direction that the Plaintiff will not be able to execute the decree to the extent as described by the Court.

3. With the able assistance of both the learned Advocates, perused the record of the case. In order to appreciate the findings returned by the learned executing Court in the impugned order, both the learned Advocates are *ad idem* that eight orders are required to be seen.

Decree is passed on 02.04.2008. It is argued by Mr. Mirza that originally there were two Suits filed by the Society; one against the Partnership Firm and one against the Corporation. Both the Suits were comprehensively decreed on 02.04.2008. Two First Appeals i.e. First Appeal Nos. 1992/2008 and 1008/2010 came to be filed. They were tagged together. This Court by order dated 02.08.2011 dismissed the Civil Applications filed for seeking ad-interim reliefs and passed a direction that the Plaintiff i.e. the Society shall not execute the decree passed in Suit No. 2717/1999 for a period of three months from the date of the said order. Pursuant to this order, it is seen that the learned Appellate Court passed a further order dated 14.12.2011 in Civil Application No. 4956 of 2011 directing the parties to maintain *status quo* until 12.01.2012. Next relevant date is 03.08.2012 as it is presumed that in the interregnum the matter did not probably reach hearing and it is contended by Mr. Damle that the ad-interim order has continued during the interregnum and does so even till today. Be that as it may, 3rd order is dated 03.08.2012 and by this order, learned Appellate Court continued the ad-interim relief for a period of two weeks from the date of the order. 4th order is dated 24.08.2012 where again on the request of Respondents, Court observed that interim protection granted by this Court shall remain to continue till the next date i.e. 07.09.2012. 5th order is dated 05.10.2012 on which date

once again the First Appellate Court directed that interim protection granted by this Court earlier is continued till the next date i.e. upto 20.10.2012. 6th order is dated 03.12.2012 where once again at the request of learned Advocate for Applicant and by consent of parties, matter was adjourned to 17.01.2013 and interim relief, if any, was directed to be continued till that date. 7th order dated 21.02.2013 is passed in First Appeal and in another Civil Application which states that interim relief granted earlier to continue till 15.04.2013 on the request of the Applicant i.e. Respondent herein. The last order is dated 15.04.2013 which states that ad-interim as in operation shall remain in force till admission / hearing. The last order is the bone of contention.

4. After perusing the above orders, it needs to be noted that in the first order passed by this Court on 02.08.2011, this Court had made it clear that execution of conveyance will be subject to final outcome of the Appeal. This is specifically in view of the fact that the Respondents in prayer clauses (a-i) to (a-x) in Suit No. 2717/1999 had sought 10 specific prayers and notably the principal prayer therein was with respect to demolition of the old existing structure which was agreed to be demolished.

5. Prayer clauses (a-i) to (a-9) have not only been clearly and categorically refused, but not even commented upon and hence clearly

stand refused by the Appellate Court and the said Court has made it clear that execution of conveyance will be subject to final outcome of Appeal. I have impressed upon Mr. Damle to show me any order which would allow an embargo on the Society not to proceed with execution. Mr. Damle has unfortunately not being able to show any order but as a matter of fact would submit that interpretation of the aforesaid 8 orders would have been understood by this Court by considering that the First Appeal has been filed and 8 orders have been passed by this Court in the First Appeal between 2011 and 2013 and this Court should therefore hold that the stay in the First Appeal is continued till date. I however disagree with Mr. Damle's submissions.

6. The above observation is clearly fortified by a subsequent order of this Court dated 22.03.2019 which is at Exh. G10, page Nos. 114-115 of the Petition wherein the Appellate Court has clearly clarified that the other part of the decree was not stayed by this Court. Paragraph No. 3 of the said order is reproduced below:-

"3. It is to be noted that in the present proceedings, original defendant filed this First Appeal challenging the judgment and decree dated 02.04.2008 passed by City Civil Court. The defendant also preferred Civil Application in that First Appeal. That Civil Application stands rejected and made it clear that the execution of the conveyance will be subject to the final outcome of the Appeal. This itself shows that the other part of the decree was not stayed by this Court."

7. Appreciation of the above orders was the sole issue before the executing Court while passing the impugned order. Rather the learned

executing Court though has framed a correct question in paragraph No. 8 of the order, the reasoning given by the learned Executing Court is to the contrary. Despite the learned executing Court noting the aforementioned facts, solely interpreting the order dated 15.04.2013 which notes that as ad interim in operation shall remain in force till admission / hearing, learned executing Court had concluded that since hearing of First Appeal is not yet completed, it is obvious that ad-interim relief in favour of Defendant No. 4 is in force till today and therefore in the opinion of the executing Court unless and until the final hearing of the aforesaid two First Appeals is completed, the decree passed in SC Suit No. 2717/1999 cannot be executed. Such a reasoning is not only incorrect but the facts in the present case are extremely gross. By passing such an order in execution proceedings, what the executing Court has done is to give an imprimatur to all possible delaying tactics employed by Respondent No. 9 in the present case to delay the execution of the decree. I say this with utmost responsibility after perusing the above quoted orders. Mr. Mirza would submit that the subject structure standing on the suit land was agreed to be demolished and in lieu thereof, the Partnership Firm constructed the building of the Society after utilizing the FSI and having taken the entire benefit. While hearing this submission, Mr. Damle made submissions across the bar that Respondent No. 9 who is

in occupation of the structure would like to retain the said structure as it is by making a regularization application despite the fact that he is one of the partner of the Partnership Firm along with all other partners who are occupying the top two floors which were constructed in lieu of the old structure area and which was agreed to be demolished and the land was to be made available to the Society. Mr. Mirza would submit that out of the original 9 partners, 8 partners have already relinquished and consented in so far as the decree is concerned because the Partnership Firm stands dissolved long back and it is only Respondent No. 9 who is making life miserable for the Society. It is very clear that by ingenious drafting and ingenious arguments made across the Bar on the ground of interpretation of orders passed by the Appellate Court, the learned Trial Court has been persuaded to pass the impugned order. I am shocked at the findings returned by the learned Trial Court when it states that on reading the order dated 15.04.2013 and considering that hearing of First Appeals is not yet been completed, it is obvious that ad-interim relief granted in favour of Defendant No. 1 is still in force. I have repeatedly persuaded Mr. Damle to show me as to how the ad-interim relief has remained in force after the order dated 15.04.2013 and merely because for the last 10 years since First Appeals have not been heard, the Society i.e. Decree Holder has suffered the consequences. Mr. Damle has been

very fair and would submit that they have expressly moved the Appellate Court for hearing of First Appeal Nos. 1992/2008 and 1008/2010 and due to certain exigency requested the Appellate Court to hear the Appeals which are now listed on 01.03.2024. Be that as it may, the issue before me pertains to the impugned order dated 04.07.2023.

8. In view of the above findings, the impugned order dated 04.07.2023 does not stand to any test. It cannot be sustained and is therefore comprehensively quashed and set aside.

9. In view of the above order, Darkhast No. 161 of 2019 stands allowed. Learned executing Court is directed by this Court to take appropriate steps in consequence of allowing the Application to execute the decree dated 02.04.2008 strictly in accordance with law and after following the due process of law.

10. Writ Petition is allowed and disposed of in the above terms.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2024.02.12
20:32:41
+0530