

HARSHADA H. SAWANT  
(P.A.)

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

**WRIT PETITION NO.8206 OF 2024**

Chandrashekhar Satyendranath Kothare

.. Petitioner

**Versus**

Deepika Sunil Kothare and Ors.

.. Respondents

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- Mr. Vishal Pattabiraman a/w. Mr. Mukesh Naynak, Advocates for Petitioner.
- Mr. Rammani G. Upadhyay, Advocate for Respondents.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : AUGUST 14, 2024**

**P.C.:**

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Pattabiraman, learned Advocate for Petitioner and Mr. Upadhyay, learned Advocate for Respondents.
- 3.** Perused the praecipe dated 14.08.2024 and the Writ Petition.
- 4.** The Writ Petition is filed by the Judgement Debtor in Execution proceedings on 16.03.2024. It was moved before me yesterday when I directed the parties to take appropriate instructions and address the Court today so that the Petition can be heard expeditiously in view of the controversy involved pertaining to valuation of the suit property. Today once again Writ Petition is moved by both the learned Advocates appearing for the respective parties, for

seeking urgent orders. Petition challenges the impugned order dated 19.12.2023 passed by the learned Executing Court, *inter alia*, directing the Additional Registrar (Civil) of the said Court to appoint a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC') to ascertain the market value of the subject flat as per Schedule, auction the same and thereafter divide the sale proceeds amongst the parties in accordance with Judgement dated 25.03.2019. Admittedly, there are three co-sharers which is not disputed by Petitioner also. Petitioner being one and Respondent Nos.1 and 2 are the others. Hence whatever is the value of the subject flat, it would have to be divided amongst the three co-sharers who are entitled to the same under the Judgement dated 25.03.2019.

**5.** In such a case what is expected of the Court Commissioner is to act fast. Both learned Advocates have jointly informed me that the Judgement Debtor has deposited an amount of Rs.60,000/- whereas the Judgement Creditor has deposited an amount of Rs.80,000/- with the Court Commissioner upon being called to do so after the impugned order is passed. The Court Commissioner is an Advocate practicing in the said Court. However no concrete steps have been taken thereafter by the Court Commissioner despite holding three meetings. Resultantly, compelling the Judgement Debtor to file the present Writ Petition on 16.03.2024. The Petition was moved only yesterday for the first time.

**6.** What I find is that despite parties depositing a substantial amount with the Court Commissioner, no steps are taken by the Court Commissioner to ascertain the market value of the subject flat. Petitioner – Judgement Debtor has placed before me a Valuation Report on the basis of ready recknor in respect of the subject flat which according to him is to be computed @ Rs.30,250/- per sq.ft. The subject flat in question is admittedly 1800 sq.ft. in area. However, Mr. Upadhyay, learned Advocate for Respondent Nos.1 and 2 seriously objects and submits that an independent Valuation Report is required to be called for in respect of the subject flat which is a newly allotted flat in a redeveloped building admeasuring 1800 sq.ft. in Santacruz (East), Mumbai and according to his instructions the going rate of the said property is approximately in range of Rs.36,000/- per sq.ft. It was the duty of the Court Commissioner to act as expeditiously as possible which has not been done. Parties have also moved the learned Executing Court seeking directions to the Court Commissioner to act fast despite which no steps are taken.

**7.** The parties are therefore before me. The Judgement Debtor is before me and has made a statement before the Court through his Advocate that since the Judgement Debtor had been in occupation of old room with his family and also the newly allotted flat and is using the subject flat as his dwelling house, the order directing auction of the subject flat passed by the learned Executing Court be stayed as he is

ready and willing to give the share of the other two co-sharers who are his siblings to the extent of their one-third share each in monetary terms. However, in order to do so, exercise of Valuation rather an independent neutral Valuation will have to be done so that there is no ambiguity on the issue of the market value of the flat. The Judgement Debtor who is present in Court has also made another statement through his Advocate that if so desired and if directed by this Court, he is ready and willing to show his *bonafides* by depositing an amount of Rs.1 Crore in the Court, requested the Court not to proceed with its sale. His Advocate would submit that according to their estimate, the subject flat is worth approximately 4.5 Crores and if the Respondents would accept this valuation, he would deposit Rs.1 Crore immediately to show his *bonafides*, and even pay the balance to the Respondents as directed. Mr. Upadhyay has refuted the valuation offered by Petitioner and would submit that the subject flat is worth more than 6.5 Crores in value. However Mr. Upadhyay would submit that Respondents are also not in favour of the flat being sold provided their share in terms of the market value of the flat / monetary compensation is given to them. If that be the case, the only exercise required to be done is to ascertain the correct valuation of the subject flat as on date so that the Judgement Debtor can be put to terms to deposit the co-sharers' share either with them or in this Court and the flat can be saved from auction.

**8.** In view of the above observations and findings the impugned order dated 19.12.2023 is immediately stayed. The appointment of the Court Commissioner who has been appointed by the Additional Registrar (Civil) is cancelled. The said Court Commissioner is directed to return the monies received from the respective parties after deducting whatever costs that has been incurred by the learned Court Commissioner in conducting two or three meetings between the parties and the balance money be returned back to the parties within one week from being intimated about this order by the parties.

**9.** In order to expedite the above issue, I appoint Mr. Amol Shetgiri of M/s. Shetgiri and Associates Mumbai as a Valuer to visit the said flat at Santacruz (East) and prepare a Valuation Report ascertaining the market value of the subject flat as expeditiously as possible and preferably within a period of four weeks from today and submit the Report to the Court.

**10.** Both parties agree to co-operate with Mr. Shetgiri and place with him all such relevant documents concerning the subject flat as called upon by him for determining its market value and help him in carrying out survey, inspection, any measurement if required for the above purpose.

**11.** A copy of this order shall be intimated and placed before the Valuer by Advocates for any of the parties. Learned Advocate Mr.

Pattabiraman appearing for the Petitioner shall co- ordinate the meetings with the Valuer and the Advocate for the Respondents whenever the site visit is planned and all parties can remain present on the date of site visit.

**12.** All requisites and details for preparing the Valuation Report be provided by the learned Advocates for the parties to the Valuer as called for by him.

**13.** Once valuation report is prepared, one original copy alongwith Annexures shall be filed in this Court and two copies shall be shared with the Advocates for Petitioner and Respondents by the Valuer. Professional fee of the Valuer shall be paid by both parties equally (50% each) within a period of one week on they being called to deposit the same and on raising of invoice by the Valuer. Advocates for the parties shall ensure that Valuer's fee and any charges are duly paid and not kept pending.

**14.** I am making a request to the Valuer to expedite his Report considering that the parties have suffered for the last six months after passing of the order dated 19.12.2023 and much time has been lost. Further order shall be passed after the Valuation Report is received from Mr. Amol Shetgiri and the same is shared with the parties and on hearing the objections of the parties on the same.

**15.** Stand over to 14<sup>th</sup> September, 2024. To be placed under the caption for 'First on Board'.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

HARSHADA  
HANUMANT  
SAWANT

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by HARSHADA  
HANUMANT  
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Date: 2024.08.16  
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