

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8474 OF 2024

M/s. Jayantilal Investments

.. Petitioner

Versus

Madhuvihar Co-operative Housing Society Ltd.
and Ors.

.. Respondents

.....

- Mr. Yatin R. Shah a/w. Mr. Keyur Adhvaryu, Advocates for Petitioner.
- Mr. Mayur Khandeparkar (V.C.) a/w. Mr. Rubin Vakil, Mr. Sahil Gandhi and Mr. Vivek Patade i./by R. S. Upadhyay, Advocates for Respondent Nos.1 to 6.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 19, 2024

ORAL JUDGMENT:

1. By the present Writ Petition, Petitioner has impugned order dated 04.05.2024 passed by learned Executing Court while determining Execution Application No.332 of 2015 in L.C. Suit No.4385 of 1997. The order is appended at Exhibit-T, page No.200 to the Writ Petition. Petitioner is the Judgment Debtor.

2. Mr. Shah appears for Petitioner – Judgment Debtor. He would submit there is non-compliance of a previous order dated 22.08.2023 passed by the Executing Court and in that view, the impugned order ought not to have been passed. This order dated 22.08.2023 is appended at Exhibit-Q, page No.190 of the Writ Petition. He has drawn my attention to the said order. I have perused the same.

3. It is seen that learned Executing Court adjourned the matter on 22.08.2023 with a noting that hearing on the objection of the Judgment Debtor contained in the Affidavit dated 09.04.2016 under Order XXI Rule 22 of the Code of Civil Procedure, 1908 (for short ‘CPC’) is adjourned to the next date i.e. 20.09.2023. According to Mr. Shah, as per the above order, the Executing Court ought to have heard and considered all objections of the Judgment Debtor and recorded its satisfaction on the same. This is alleged to not been done by the Executing Court, according to Petitioner, no further order much less the impugned order could have been passed in the Execution proceedings. However, objections of the Petitioner have been dealt with and decided by the impugned order. It is seen that the affidavit containing objections raised under Order XXI Rule 22 of the CPC filed by the Judgment Debtor – Petitioner is appended at page No.48 of the Writ Petition. Perusal of the same shows that objections raised rather the only sustainable objection that was taken is contained in paragraph Nos.3 to 5 therein. Judgment Debtor would contend that in the above paragraphs it is mentioned that there were certain Chamber Summonses taken out by the Decree Holders i.e. Respondents which were pending. These Chamber Summonses date back to the years 2012 and 2013. However, Mr. Shah would candidly inform the Court that the said Chamber Summonses are all disposed of and in that view of the matter, that specific objection raised in paragraph No.3 of the

Affidavit dated 09.04.2016 does not survive.

4. Mr. Shah would next draw my attention to the subsequent Affidavit filed in the year 2023 i.e. after seven years by the Judgment Debtor which is appended at Exhibit-S, page No.194 of the Writ Petition and would contend that one more objection was raised therein which ought to have been considered by the Executing Court. He would draw my attention to paragraph Nos.3 and 4 of the said Affidavit and argue that before execution can be proceeded with, the correct decree has to be appended and placed before the Executing Court. He would submit that the decree which is annexed to the execution application has been substituted by the judgment of the Appellate Court in First Appeal. He would submit that the decree of this judgment of the Appellate Court has not been drawn up as yet. He would submit that if execution is desired by Decree holders, then under the Bombay High Court (Appellate Side) Rules, 1960 (for short **“the said Rules”**) and more specifically under Rules 1 to 4 of Chapter XI, for seeking execution, the correct decree in First Appeal should be placed before the Executing Court, otherwise the execution application is deemed to be bad in the eyes of law. He would submit that this objection needs to be upheld since it is clearly an admitted non-compliance on the part of Decree Holders while applying for execution.

5. That apart, he would also draw my attention to paragraph

No.5 of the Affidavit and would contend that once the decree of the Trial Court is modified by the Appellate Court, the Trial Court's decree stands substituted and execution can no longer be sought of the original Trial Court's decree, which is the case herein, and this objection is not considered while passing the impugned order and determining the execution proceedings.

6. In support of his submissions, Mr. Shah has referred to and relied upon the decision of the Orissa High Court in the case of *Gangadhar Choudhury V. Syed Sajid Ali* ¹ and drawn my attention to paragraph No.13 thereof. He would submit that provisions under Order XXI Rule 23 of CPC require issuance of appropriate notice under Rule 22 thereof and for hearing of objections to the satisfaction of the Court as to why the decree cannot be executed and only after such satisfaction is recorded as per sub-rule (2) of Rule 23 of Order XXI of CPC, further steps for execution of the decree under Order XXI Rule 23 of the CPC can be taken by the Court.

7. He would submit that provisions stipulated in Order XXI of the CPC are mandatory in nature and have been admittedly circumvented by the Decree Holders, which is not taken cognizance of by the Executing Court while determining the Execution Application by the impugned order dated 04.05.2024.

¹ AIR 1973 ORISSA 124.

8. *PER CONTRA*, Mr. Khandeparkar, learned Advocate for the Decree Holders appearing through VC has drawn my attention to the material dates and events which I find it necessary to mention herein considering the longevity of the case and the conduct of the Judgment Debtor. It is seen that Decree Holders have filed the suit in the year 1997 seeking conveyance of the suit property and other reliefs. Suit was decreed on 31.03.2004, *inter alia*, directing the Judgment Debtor to execute conveyance of the suit property within three years as also other directions were issued to the Commissioner for taking Accounts. The decree was challenged in First Appeal No.786 of 2004 before this Court unsuccessfully and Judgment was delivered on 16.03.2006. The First Appeal was dismissed. A challenge was maintained to the said Judgment in First Appeal before the Supreme Court which set aside the order and remanded the First Appeal back to this Court for rehearing on the issues set out in the Supreme Court order dated 10.01.2007. This Court thereafter by judgment dated 07.10.2010, decreed the suit in favour of Respondents i.e. the Decree Holders and directed Petitioner to convey the suit property to Respondents once again with further consequential directions. Special Leave Petition against this Judgment passed in First Appeal was filed which was dismissed by the Supreme Court on 03.12.2010. Review Petition filed for review of judgment dated 07.10.2010 was also dismissed on 05.07.2011. Special Leave Petition filed against dismissal of Review Petition by this

Court was also dismissed by Supreme Court on 13.02.2012. Respondents – Decree Holders filed Execution Application before the Executing Court on 10.02.2015 and since then they are prosecuting the said Execution Application until the present impugned order is passed by the learned Executing Court. Petitioner – Judgment Debtor has been successful in prolonging execution of the decree successfully since 2012 i.e. for 12 long years on some pretext or another. It is seen that substantial pleadings are filed between the years 2015 and 2023 by parties and more specifically by the Judgment Debtor to ensure protraction and delay in execution of the decree and frustrate the decree by all means.

9. The aforesaid timeline clearly suggests the vexatious conduct of the Judgement Debtor who wants to prolong and protract the execution proceedings and frustrate the execution of the decree.

10. Mr. Khandeparkar has referred to two specific decisions which need to be quoted here. One decision is of this Court in the case of *Atul Nathalal Patel and Ors. Vs. Raghuleela Realtors Pvt. Ltd.*² wherein my attention is drawn to paragraph Nos.21 to 24 thereof. The Bombay Amendment, effective from 01.11.1966, inserted by sub-rule (3) in Order XXI Rule 22 of the CPC has been pointed out to me. The said paragraph Nos.21 to 24 for the sake of reference and convenience, are delineated hereinbelow:-

² Interim Application (Lodging) No.6818 of 2020 decided on 02.03.2021.

“21. Mr. Narula’s other defence that notice under Order XXI Rule 22 has not been issued is only a red herring argument. A fair reading of Rule 22 of Order XXI will reveal that the Bombay Amendment clearly would come to the assistance of the applicants inasmuch as this is a case where issuance of notice cannot be construed as mandatory prior to proceeding in an execution and in any event, the applicants have thought it fit to move an application for dispensation of notice and I am inclined to hold in their favour on that count. It is by now well settled that the purpose of issuing notice under Order XXI Rule 22 is that a defendant who may have a plausible explanation is not prevented from raising it at a time when attachment is being levied on property in execution of a decree. A period of two years is provided for execution of the decree, which is a period of time where the applicants are at liberty to proceed in unconditional execution. Thereafter, prior to attachment being levied, a notice is required to be issued. This will enable the respondent to show cause why the attachment ought not to be issued.

22. There may be various reasons why the respondent is given this opportunity for e.g. in a money suit and a money decree, an attachment can be levied on bank accounts, on house property or even on salary and other emoluments. The purpose of the rule is that an opportunity is granted to the respondent to show cause why the attachment should not be levied without granting him a hearing. It is always possible that the respondent would then make good the amount payable under the decree or otherwise satisfy the applicants’ claim.

23. The Bombay Amendment, effective from 1st November 1966, inserts sub-rule (3) has been inserted in Rule 22 of Order XXI and that reads as follows :-

“Notwithstanding anything contained in sub-rules (1) and (2) above, no order for the execution of a decree shall be invalid merely by reason of the omission to issue a notice under this rule, unless the judgment-debtor has sustained substantial injury by reason of such omission.”

24. In my view, there is no occasion for the judgment-debtor to have suffered any injury in the present case and as I have already stated, the purpose of introducing Rule 22 is to ensure that a defendant though liable to comply with the terms of a decree is not taken by surprise after passage of time and in circumstances, which may enable him to contend that the decree ought not to be executed for reasons to be made out by such defendants. Absence of notice under Rule 22 of Order XXI is in my view of no assistance to Mr. Narula. In the present case, the hearing of this IA itself would constitute a option for the respondent to show cause under Order XXI Rule 22. Mr. Narula in that respect has set up all possible defences and in my view

the purpose of a notice has been served. Mr. Narula's reliance on the decision of this court in Laxman Bala Surve (Supra) is of no avail. The decisions in Naresh Kumar Badrikumar Jagad and Shree Prithvi Cotton Mills Ltd. also do not help the respondent since the enactment of RERA does not make it impossible for the respondent to comply with this consent decree. Besides, the obligation under Clause 7 is only one method of payment. The respondent is bound to and could have paid the balance without dipping into collection from sales."

10.1. It is seen that this Court has held that the purpose of introducing Rule 22 is to ensure that a Defendant though liable to comply with the terms of the decree is not taken by surprise after passage of time and in circumstances, which will enable the decree holder to contend that the decree ought not to be executed for reasons to be made out by such Defendant. In that case as held by this Court the object, ethos and reasons for enactment and inserting of Rule 22 of Order XXI of CPC as also the Bombay Amendment has been clearly etched out in paragraph Nos.21 to 24 referred to hereinabove. In that view of the matter, submissions made by Mr. Shah that it is a mandatory requirement of Rule 22 Order XXI of CPC read with sub-rule (2) of Rule 23 that unless and until the Executing Court hears the objections of the Judgment Debtor and records its satisfaction thereon and therefore the decree cannot be executed further cannot be countenanced. The Bombay Amendment referred to hereinabove clearly applies to this case also. Infact there is a clear fallacy in the submissions made by Mr. Shah. Despite the objections having been dealt with, the Judgment Debtor has filed the present Petition,

obtained a stay with the sole purpose of delaying the execution. Infact, the Petition itself is not maintainable on this ground which is argued by Mr. Shah.

10.2. The next decision referred by Mr. Khandeparkar is of the Supreme Court in the case of *Satyawati Versus Rajinder Singh and Another*³ and he draws my attention to paragraph No.12 thereof which is reproduced below for reference:-

“12. It is really agonising to learn that the appellant-decree-holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January 1996. As stated hereinabove, the Privy Council in General Manager of the Raj Durbhunga v. Coomar Ramaput Sing¹ had observed that the difficulties of a litigant in India begin when he has obtained a decree. Even in 1925, while quoting the aforesaid judgment of the Privy Council in Kuer Jang Bahadur v. Bank of Upper India Ltd.³ the Court was constrained to observe that: (AIR p.448)

“Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights”.”

10.3. Decision of Supreme Court above clearly applies to the facts of the present case and I do not find it necessary to repeat that it is indeed agonising to the Decree Holders to execute the decree after so many years, after languishing for so many years in the Court of law, even after obtaining the decree in their favour. It is seen that the Judgment Debtor has pulled out all stops, at all levels and at all times to ensure that execution of the decree is protracted.

³ (2013) 9 Supreme Court Cases 491.

11. I have heard Mr. Shah, learned Advocate for Petitioner and Mr. Khandeparkar, learned Advocate for Respondent Nos.1 to 6 appearing virtually. With their able assistance, I have perused the pleadings and record of the case. Submissions made on behalf of the learned Advocates have received due consideration of this Court.

12. Perusal of the impugned order and more specifically paragraph No.21 onwards where reasons are recorded in the order clearly deal with the specific objections by the Judgment Debtor. The objections are not only dealt with but considered and rejected with a speaking order. This is crucial. Hence the Petition filed on the same grounds is a clear misrepresentation to the Court. It is a vexatious approach. After referring to various decisions of the Courts, learned Trial Court in paragraph Nos.31 and 32 have returned cogent findings to the very objections raised by the Judgment Debtor with respect to filing of the Certified Copy of the First Appellate Court's decree for execution. Hence, if Mr. Shah contends that objections are not considered, then the Petitioner is making a blatantly false statement to the Court. Such conduct of Petitioner is deprecated by the Court. The said findings returned in paragraph Nos.31 and 32 are reproduced below:-

“31. So far as the objection taken by the JD's as to tenability of Execution application, it is to point out that initially the suit bearing No.4385 of 1997 was filed in City Civil Court, Mumbai which came to be adjudicated on dated 31.03.2004. Against said judgment, the plaintiffs and defendants both have preferred

First Appeal No. 786 of 2004 and First Appeal No. 989 of 2004 respectively. As stated earlier above, only the First Appeal No. 786 of 2004 came to be allowed and accordingly decree came to be passed by Hon'ble High court which is here under execution. In these set of facts and circumstances, the adjudication of both the Appeal are by Civil Appellate Jurisdiction. Therefore, the decree passed by this court in L.C Suit No. 4385 of 1997 now merged in the decree passed by Hon'ble High Court. Secondly, the decree dated 31.03.2004 now being merged in the decree dated 07.10.2010 passed in First appeal No. 786 of 2004 from said date, here the period of limitation starts. So as per Article 136 of limitation Act, 1963, this execution application being filed within 12 years (stipulated period), it is well within the period of limitation. Therefore, it cannot be said that the decree passed in First Appeal No. 786 of 2004 is by other than Appellate Civil Jurisdiction. As such, the very submission made by Ld. Counsel for JD/defendants that present execution is not maintainable before this Court and is not filed within limitation, finds not acceptable.

32. In the set of facts and submissions on record, it is necessary to point out that since the certified copy placed on record by plaintiff/DH by letter dated 01.04.2022 clearly shows words "Appellate Decree" in First Appeal No.786 of 2004 dated 07.10.2010, then there remains nothing to conclude that the requirement of application for execution as contemplated by the Code are not satisfied. This Court there cannot go beyond the 'caption words' mentioned in the certified copy filed on record. Hence, the very submission by Ld. Counsel for JD/defendants as to not making the notice under Order XXI Rule 22 of CPC absolute finds not acceptable."

13. On perusal of the above findings, no fault whatsoever can be found with the findings as the satisfaction of the Court has been clearly recorded after hearing the Judgment Debtor. Hence there is no transgression of any statutory provision in Execution proceedings much less sub-rule (2) of Rule 23. Once the specific objections are considered and determined, the filing of the present Writ Petition is nothing but a sheer abuse of the due process of law and done only to protract Execution proceedings. I am in complete agreement and consonance with the findings returned by the learned Trial Court while

disposing of the Execution Application. The objections raised by the Judgment Debtor before me and as delineated hereinabove as contained in the Affidavit dated 09.04.2016 and the subsequent affidavit dated 21.09.2023 have been answered and determined absolutely and comprehensively. I do not find any merits in the submissions advanced by the Judgment Debtor with respect to the objection raised *qua* Order XXI Rule 22 of the CPC once again before me in this Petition once the learned Executing Court has determined the same. The objection of the Judgment Debtor that the Court should pass an order to its satisfaction and only thereafter proceed further with Execution proceedings is therefore not sustainable. The Writ Petition fails. The impugned order dated 04.05.2024 is sustained and upheld. It is high time that the Execution proceedings are completed expeditiously as directed in the present case and the Executing Court shall take cognizance of this direction. Merely because the Judgment Debtor has the wherewithal and ability to file proceedings in the higher Court against every order passed should be curbed by passing strong orders.

14. After this order is dictated, Mr. Shah would submit that in view of the order dated 11.06.2024 passed by this Court at the time of hearing the Petition in the first instance at the time of mentioning, the order of stay granted by this Court to the impugned order dated 04.05.2024 be extended by a period of four weeks to enable the Writ

Petitioner to approach the Supreme Court.

15. Mr. Khandeparkar raises a strong objection to continuation of the stay order on the ground that despite the Decree Holders having filed a Caveat under the provisions of Section 148 of the CPC, the Petitioner – Judgment Debtor mentioned the matter on 11.06.2024 without notice to the Decree Holders and obtained the order of stay and in that view of the matter, looking at the conduct of the Petitioner, the application for stay made by Mr. Shah be rejected.

16. Apart from the reason submitted by Mr. Khandeparkar, I have one more reason to reject the application made by Mr. Shah. Considering the timeline of the case from 1993 onwards delineated hereinabove, I am not at all surprised that stay is sought to be extended at this stage. The only mission of the Judgment Debtor is to delay execution proceedings by challenging each and every order before the higher Court. As observed by me, filing of this Petition itself is a vexatious attempt on the part of the Judgment Debtor despite the Executing Court having considered his objections and recorded its satisfaction on them. Hence in view of the above reasons, I am not inclined to allow the request of Mr. Shah for continuation of the stay order dated 11.06.2024. The request for stay of this order is declined and rejected. This judgment was dictated in open Court after hearing the parties. I had not dictated any order of costs at that time. However

while correcting the judgment, I am of the opinion that this is a fit case for levy of exemplary costs on the Petitioner. Hence, I am inclined to levy exemplary costs on the Petitioner – Judgment Debtor. Reason is that, I am fully convinced to observe that Courts should deal with parties like the Petitioner – Judgment Debtor in this case very strictly and with a heavy hand. A strong and deterrent message needs to be sent to such litigants who have the wherewithal to file repeated frivolous and vexatious applications to frustrate the decree endlessly. This is one such case herein. As far back as in 1872, the Privy Council in the case of ***Raj Durbhunga V. Maharajah Coomar Ramaput Sing⁴*** has observed as under:-

“the difficulties of a litigant in India begin when he has obtained a decree”.

17. The same is true even today after 152 years due to the presence of litigants like the Judgment Debtor in the ecosystem. In view of my above observations and findings I am inclined to direct the Petitioner - Judgment Debtor to pay exemplary costs of Rs.1,00,000/- to the **A.K. Munshi Yojana’s J.T. Sheth Mandbuddhi Vikas Kendra**, a Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana

4 1872 SCC OnLine PC 16 : (1871-72) 14 Moo IA 605 at page 612.

Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163, which shall be paid by the Petitioner within a period of two weeks from today, failing which the Collector, Mumbai and or (MSD) is directed by this Court to recover the said costs levied from the Petitioner as arrears of land revenue.

18. In view of the above observations and findings, Writ Petition stands dismissed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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by HARSHADA
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