

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

WRIT PETITION NO.8918 OF 2024

Deepak Sumant Vengurlekar

....Petitioner

V/S

Pradeep Sumant Vengurlekar & Ors.

....Respondents

Mr. Saurabh V. Patil for *the Petitioner.*

Mr. Ashish T. Suryavanshi for *Respondent Nos.2 and 3.*

Mr. Ateeb Deepak Vengurlekar – son of Petitioner present in Court.

CORAM: SANDEEP V. MARNE, J.

DATE : 27 JUNE 2024.

P.C.:

1 The challenge in the present Petition is to the order dated 23 April 2024 passed by the learned Judge of the Small Causes Court at Mumbai on Application at Exhibit-37, by which Plaintiff and Defendant Nos.1 and 2 are permitted to construct a wall in the suit premises as per Exhibit-A to the Consent Terms dated 6 December 2016 as well as the modified Consent

Terms at Exhibit-38. Petitioner/Defendant No.3 is restrained from interfering and/or creating obstruction to construction of the said wall.

2 I have heard the learned counsel appearing for Petitioner and the learned counsel appearing for Respondent Nos.2 and 3.

3 It appears that RAD Suit No.1609 of 2013 is filed by the Plaintiff, who is the real brother of Petitioner/Defendant No.3 seeking a declaration of joint tenancy in respect of the suit premises. Plaintiff also prayed for partitioning the suit premises for handing over half portion of the suit premises to him.

4 It appears that Consent Terms came to be filed between the Plaintiff and Defendant Nos.1 and 2/landlords, under which the landlords have agreed to joint tenancy rights of Plaintiff in respect of the suit premises and the suit premises are agreed to be partitioned by construction of wall as indicated in Exhibit-A to the Consent Terms. The said Consent Terms are not signed by Defendant No.3/Petitioner. It appears that Petitioner did not have any objection *per se* for settlement of disputes between Plaintiff and Defendant Nos.1 and 2. However he objected to the plan of partition annexed at Exhibit-A to the Consent Terms. In paragraph 5(e) of his Reply, Petitioner/Defendant No.3 contended as under:

“5(e). Reply to para 5 and 6: I say that the Plaintiff and the Defendant No.1 and 2 are at liberty to settle their dispute in any way and I do not want to intervene in that settlement. I am not agree with the present plan of settlement as provided in the present consent terms and schedule annexed therewith. The Plaintiff and the Defendant No.1 and 2 are at liberty to with draw their respective suit and I do not have any objection to that effect.”

5 The Trial Court proceeded to decree the suit *qua* Defendant Nos.1 and 2 in view of the Consent Terms. However, since Petitioner/Defendant No.3 did not sign the Consent Terms, the suit has been continued between the Plaintiff and Petitioner/Defendant No.3. It appears that aggrieved by the decree dated 6 December 2016, Petitioner/Defendant No.3 filed Miscellaneous Appeal No.97 of 2017 before Appellate Bench of the Small Causes Court, which came to be dismissed by judgment and order dated 16 February 2019.

6 Plaintiff and Defendant Nos.2 and 3 have entered into modified Consent Terms, under which it is agreed that upon construction of wall and partition of the suit premises, Plaintiff shall surrender his right, title and interest in respect of his portion (Part-A) in favour of the landlords (Defendant Nos.1 to 3).

7 An Application came to be filed at Exhibit-37 by Plaintiff and Defendant Nos.1 and 2 jointly for execution of the Consent Terms as well as modified Consent Terms dated 6 February 2016. By the impugned order dated 23 April 2023, the Small Causes Court has passed following order:

- “1. Plaintiff and defendant Nos.1 and 2 are permitted to construct a wall in Suit Premises as per Exh.A to consent terms dated 06.12.2016 and modified consent terms Exh.38.
3. Police Station In-charge of Dr. D.B. Marg Police Station is directed to provide Two Male Constables and Two Female Constables as protection while constructing the wall as per this order.
4. Plaintiff and defendant Nos.1 and 2 are directed to jointly bear the costs of Police Protection and pay the fees in the concern Police Station.
5. Issue letter to concern Police Station accordingly.”

8 Petitioner is aggrieved by the order dated 23 April 2023 and has filed present Petition.

9 It must be observed at the very outset that Petitioner has suppressed most of the vital documents while filing the present Petition. While a complaint is raised about illegal settlement of the suit between Plaintiff and Defendant Nos.1 and 2, Petitioner has suppressed the Reply filed to the Consent Terms before the Small Causes Court, in which the Petitioner did not raise any objection to the settlement of disputes between Plaintiff and Defendant Nos.1 and 2. He raised limited grievance with regard to the plan at Exhibit-A for construction of a wall. Whatever may be the position, the said Reply ought to have been produced alongwith the present Petition. Another vital document as well as information suppressed by Petitioner is about filing of Miscellaneous Appeal No.97 of 2017 challenging the Consent Decree dated 7 June 2016 and its dismissal of the Appellate Bench on 16 February 2019.

10 As a matter of fact, on account of suppression of material information and documents, this Court would be justified in dismissing present Petition. However, both the parties have agreed to mutually resolve the dispute. The learned counsel appearing for Respondent Nos.2 and 3 (original Defendant Nos.1 and 2), after taking instructions from his client, has made the following statements:

- i) That landlords/Defendant Nos.1 and 2 shall permit Petitioner to construct toilet in Part-B of the plan appended at Exhibit-A to the original Consent Terms dated 6 December 2016;

ii) That Defendant Nos.1 and 2/landlords shall take the responsibility in respect of any objection, if and when raised, in respect of toilet block constructed by Petitioner in Part-B of plan at Exhibit-A to the Consent Terms dated 6 December 2016;

iii) That Defendant Nos.1 and 2 shall pay to Petitioner an amount of Rs.30,000/- for construction of toilet in his part of the suit property. That the payment of Rs.30,000/- shall be made by way of Demand Draft drawn in the name of the Petitioner within two days.

11 In view of above statements made by Defendant Nos.1 and 2, the learned counsel appearing for the Petitioner, after taking instructions from Mr. Ateeb Deepak Vengurlekar, who is the son of the original Plaintiff Pradeep Suman Vengurlekar, makes a statement that the Petitioner shall construct the toilet in his portion within two months from today.

12. Statements made above are accepted as undertakings given to the Court.

13. He would request for deferment of execution of the order dated 23 April 2024 for a period of two months. Accordingly, the order dated 23 April 2024 shall not be executed till 27 August 2024 on account of the statements made by the Petitioner as aforesaid. It is made clear that irrespective of whether the Petitioner is in a position to construct a toilet within his own portion on or before 27 August 2024, the order dated 23 April 2024 passed by the Small Causes Court shall forthwith be executed after 28 August 2024. It is made clear that no extension of time shall be granted to the Petitioner.

14 In view of the above arrangement between the parties, nothing survives to be adjudicated in the Petition. Writ Petition is accordingly disposed of.

(SANDEEP V. MARNE, J.)

SUDARSHAN
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KATKAM

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