

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

CIVIL REVISION APPLICATION NO.337 OF 2024

Asha Vijay Karande

...Applicant

vs.

Sheela John Pitambar & Ors.

...Respondents

....

Mr. Avinash Fatangare a/w Mr. Mahendra Shingade, for the Applicant.

Ms. Pratibha Shelke, for Respondent No.1.

....

CORAM : SANDEEP V. MARNE, J.

DATE : 2 JULY 2024

P.C. :

1 The challenge in the present Civil Revision Application is to the order dated 18 June 2024 passed by Small Causes Court on Application at Exhibit-40 filed by the Applicant/Judgment Debtor under section 47 of the Code of Civil Procedure, 1908 (**Code**) for a declaration that the decree is un-executable since the same is obtained by playing fraud on the Court.

2 It appears that RAE Suit No.659 of 2007 was dismissed by the Trial Court on 15 February 2006 and the Trial Court's decree came to be reversed by the Appellate Bench on 6 January 2022 and Plaintiff's suit was decreed on the ground of *bonafide* requirement. The decree passed by the Appellate Bench was unsuccessfully tested by the Applicant before this Court in Civil Revision Application No.168 of 2022 which came to be dismissed by judgment and order dated 30 November 2023. The Applicant filed Special

Leave Petition (C) No.2271 of 2024 before the Supreme Court which came to be dismissed by order dated 2 February 2024. While the SLP was being dismissed, prayer was made on behalf of the Applicant for grant of time to vacate the premises. Accordingly the Supreme Court granted time till 30 April 2024 to vacate the premises subject to filing of Undertaking. The learned counsel appearing for Respondent No.1 would point out that the Applicant did not file Undertaking with the Registry of the Supreme Court as per the order dated 2 February 2024.

3 After seeking time to vacate the premises from the Supreme Court, the Applicant came up with a noval idea of obstructing the decree by filing Application at Exhibit-40 seeking a declaration that the decree is not executable. One of the grounds raised in the said application is that the Plaintiff suppressed the information relating to the building being in dilapidated condition and taken up for redevelopment. This, according to the Applicant, is an act of fraud on account of which the decree is unexecutable. However perusal of the judgment and order dated 30 November 2023 passed by this Court in Civil Revision Application No.168 of 2022 would indicate that the very same documents which are sought to be relied upon in Application at Exhibit-40 were relied upon before this Court in Civil Revision Application No.168 of 2022 and this Court expressed disinclination to consider the said documents as the same were not part of record before the Trial Court and Appellate Court. I am sure that the said documents would also have been relied upon before the Supreme Court as well.

4 I am therefore of the view that the Application at Exhibit-40 filed by the Applicant was gross abuse of process of law. The Applicant sought time from the Supreme Court to vacate the premises by 30 April 2024 and thereafter took a volte face and filed Application at Exhibit-40 to obstruct the decree on 10 May 2024. For such conduct of the Applicant, while dismissing the present Application, this Court would be justified in imposing costs on the Applicant.

5 Accordingly Civil Revision Application is dismissed by imposing costs of Rs.25,000/- on the Applicant. The Applicant shall pay costs of Rs.25,000/- to Respondent No.1/original Plaintiff within two weeks.

(SANDEEP V. MARNE, J.)

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