

Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.514 OF 2024

Shri Sajanbhai Nanubhai Bharwar .. Applicant
Versus
Smt. Urmila Prakash Thakur .. Respondent

-
- Mr. V. T. Dubey i/by M/s Dubey & Associates, Advocate for Applicant.
 - Mr. B. P. Pandey with Mr. Vikas Pandey, Ms. Ridhima Mangaonkar and Mr. Girish Agarwal i/by Ms. Ridhima Mangaonkar, Advocates for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 30, 2024.

P.C.:

1. Heard Mr. Dubey, learned Advocate for Applicant i.e. Judgment Debtor and Mr. Pandey, learned Advocate for the Respondent i.e. Decree Holder and Judgment Creditor.

2. The present Civil Revision Application (“CRA”) is filed on 4th March, 2023 impugning the order dated 1st November, 2023 passed by the Executing Court in Regular Darkhast No.516 of 2020. The original Suit filed by the Plaintiff has been decreed as far back on 15th December, 2012. The Appeal before the District Court has also been dismissed on 8th February, 2019 and further Writ Petition challenging the District Court’s order has been dismissed by this Court on 11th July, 2022. Special Leave Petition (“SLP”) filed in the Supreme

Court by one Defendant (Judgment Debtor No.1) has also been dismissed on 29th August, 2022. Thereafter, second SLP by second Judgment Debtor-Defendant has also been dismissed on 17th April, 2023. While disposing of the second SLP, the Supreme Court in its order dated 17th April, 2023 clearly observed and stated that it was a gross abuse of the process of the Court by the Judgment Debtor and a specific direction was given to the Executing Court to ensure that execution took place not later than one month from 17th April, 2023. When the present Civil Revision Application (“CRA”) was mentioned by Mr. Dubey on 5th August, 2024, Mr. Dubey raised a grievance with respect to identification of the suit property before me and informed me that there is dispute with respect to appointment of either the District Inspector of Land Records (“DILR”) or the private Licensed Surveyor appointed by the Decree Holder. On the above two grounds, Mr. Dubey procured the order dated 5th August, 2024. At that time, Mr. Dubey did not draw my attention nor did inform me that the Supreme Court had passed the order dated 17th April, 2023 with the aforementioned observations therein.

3. Though it is stated in the CRA in paragraph No.1 that Writ Petition in High Court and SLP filed in Supreme Court were dismissed, the details of those orders are not stated or mentioned. Further it is seen that the Supreme Court dismissed the SLP by its 1st order dated 29th August, 2022, and thereafter passed a second order on 17th April,

2023 making the aforementioned observations. It is seen that the 2nd SLP challenging the impugned final judgments and the decree was filed by the Co-Defendant (Judgment Debtor) challenging the same judgment. It is *prima facie* seen that the order dated 5th August, 2024 has been obtained by Mr. Dubey surreptitiously without disclosing the Supreme Court's orders to this Court. Such conduct on the part of the Advocate appearing at the Bar is deprecated by the Court. In fact, the said order was obtained by Mr. Dubey by seeking urgent intervention of the Court. On 5th August, 2024, Mr. Dubey mentioned Interim Application filed for condonation of delay in filing the CRA. That Application was allowed by me condoning the delay and CRA was taken up for hearing in view of the urgent exigency mentioned by Mr. Dubey which is delineated in the order dated 5th August, 2024. Mr. Dubey informed the Court that identification of the suit property out of the larger property was the issue in question and the suit property is still not demarcated. I have observed so in paragraph No.5 of the order dated 5th August, 2024. Adhering to Mr. Dubey's request, I also held that the Decree Holder is required to get the fruits of the decree and the decree will have to be executed strictly in accordance with law by identifying the suit property. I have opined that in view thereof it is appropriate to ensure correct identification and demarcation of the suit property by appointing a DILR. This is opined in paragraph No.10 of the order.

4. Thereafter, it was brought to my notice by the learned Advocate appearing for Respondent on 25th September, 2024 that the Supreme Court in its order dated 17th April, 2023 had declined to interfere with the concurrent findings of all three Courts and had observed that it was an abuse of the due process of law by the Judgment Debtors and SLP was dismissed, directing that execution should take place within one month from the date of the Supreme Court order. Order of the Supreme Court dated 17th April, 2023 was brought to my notice for the first time on 25th September, 2024. I therefore directed Mr. Dubey to appear before me on the next adjourned date that is today. Accordingly, Mr. Dubey has appeared before me. Mr. Dubey has no explanation whatsoever for not drawing my attention to the Supreme Court's order dated 17th April, 2023 while obtaining the order dated 5th August, 2024. All that he would submit repeatedly on behalf of the Judgment Debtor is that in the present case for execution of the decree only the District Inspector of Land Records ("DILR") or the Taluka Inspector of Land Records ("TILR") be appointed for identification and demarcation of the suit property and it should not be left to the Executing Court to decide as to how execution of the decree has to take place. He would strongly oppose appointment of the Licensed Surveyor by the Executing Court by the impugned order and would only insist that the DILR or TILR be appointed. There are no cogent reasons advanced by Mr. Dubey for

making such a grievance.

5. In so far as this Court is concerned, it is concerned with the order dated 1st November, 2023, which is impugned in the present CRA. This is a common order passed in Application filed below Exhibits “81” and “84” allowing the said Application. I have perused the order. There is a previous order passed by the Executing Court dated 1st July, 2023 passed below Exhibit “74” allowing appointment of a Licensed Surveyor for execution of the decree since possession warrant has already been issued as far as from 4th March, 2023 by the Court below Exhibit “25”. Possession warrant is pending execution till date due to one and only one reason that is the specific identification and demarcation of the suit property. This reason is voiced by the Judgment Debtor as also the Decree Holder represented by Mr. Pandey before me today. All that the Decree Holder wants is expeditious action. This stalemate cannot be allowed to continue since more than 15 months have lapsed after the issuance of possession warrant. It is convenient for the Judgment Debtor to keep on protracting and prolonging the execution of the decree as it is to his advantage, but this needs to be checked. The decree which is passed is required to be executed and possession warrant has to be implemented by identification and demarcation of the suit property immediately. It is seen that the learned Executing Court has by order dated 1st July, 2023 passed below Exhibit “74” and the common order vide Exhibits

“81” and “84” has observed that there are various obstructions created by the Judgment Debtors in execution of the decree and the possession warrant. It is also seen that the learned Court has categorically observed that while deciding Application below Exhibit “74”, full opportunity was given to the Judgment Debtors and they were fully heard.

6. In that view of the matter, the learned Trial Court allowed Application filed below Exhibit “81” appointing the Licensed Surveyor in accordance with the order dated 1st July, 2023 passed below Exhibit “74”. Hence no fault can now be found or alleged by the Judgment Debtors.

7. I have perused both the orders. I find no reason to interfere with the findings in both the orders. However, to expedite the process of identification and demarcation of the suit property, it would be in the interest of justice as also in the interest of the Decree Holder represented by Mr. Pandey that alongwith the Licensed Surveyor the DILR or TILR is also appointed simultaneously to ensure that the decree is taken to its fruition, otherwise it will be rendered redundant.

8. In that view of the matter, I am not inclined to disturb both the twin orders, i.e. order dated 1st July, 2023 and also the common order dated 1st November, 2023 passed below Exhibits “81” and “84” by learned Executing Court. Both the orders shall be executed.

However, request made by Mr. Dubey is considered in the interest of justice and the parties before me.

9. In that view of the matter, I direct Superintendent i.e. the TILR of village Mira, Taluka Thane, District Thane to also accompany the Licensed Surveyor appointed by the learned Executing Court by its order dated 1st July, 2023 and 1st November, 2023 on the date of carrying out the survey, identification and demarcation of the suit land and assist the Executing Court in implementing the orders passed by the Executing Court for compliance with the possession warrant. It is seen that both parties have referred to and relied upon substantial material in the nature of public documents which are annexed to the affidavit-in-reply filed by the Respondent-Decree Holder in the present Petition. All such necessary documentary evidence with respect to identification of the suit land ad-measuring 2500 square yards out of Survey No.135, Hissa No.1 (part) shall be placed before both i.e. the Surveyor and the TILR appointed by this Court for the above purpose for consideration. Both parties are directed to co-operate with the aforementioned two Officers for the purpose of implementation of the possession warrant and orders of the Executing Court. The TILR shall be entitled to obtain appropriate police protection for the purpose of carrying out the aforesaid survey, identification and demarcation for implementation of the orders of the Executing Court. If any Application is made by TILR to the local jurisdictional Police Station of village

Mira, Taluka Thane, District Thane where the suit land is situated, the concerned Senior Inspector of the Police In-charge of the said Police Station shall provide all such necessary police protection to the TILR for carrying out the above exercise. The entire costs for providing police assistance shall be borne by the Revisional Applicant represented before me by Mr. Dubey who is the Judgment Debtor. All costs of appointment of the TILR shall be borne by the Revisional Applicant entirely. I am informed that the local jurisdictional concerned Police Station is the Kashimira Police Station in District Thane. The said Police Station In-charge shall take cognizance of a server copy of this order and the Application made by the TILR for police protection and comply with the directions given. All contentions of both parties are expressly kept open.

10. The aforesaid exercise shall be carried out by the TILR and the Licensed Surveyor both by mutual consent and at their discretion with prior notice to all concerned parties within a period of six weeks from today. All parties shall act on a server copy of this order.

11. In view of this order, the *prima facie* observation made by me in paragraph No.6 of my previous order dated 5th August, 2024 do not survive.

12. With the above directions, no further directions are required to be passed in the Civil Revision Application. While sustaining the

impugned order dated 1st November, 2023, the Civil Revision Application is disposed.

[MILIND N. JADHAV, J.]

Soparkar