

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14167 OF 2024

IN

WRIT PETITION NO. 5994 OF 2024

Kiran Kashinath Karanje (HUF)
and Anr.

....Applicants

IN THE MATTER BETWEEN

Snehal Shailesh Borana and Ors.

...Petitioners

V/s.

Additional Divisional Commissioner
and Anr.

....Respondents

WITH

INTERIM APPLICATION (ST) NO. 30723 OF 2024

IN

WRIT PETITION NO. 5994 OF 2024

Snehal Shailesh Borana

...Petitioners/Applicant

IN THE MATTER BETWEEN

Snehal Shailesh Borana

....Petitioner

V/s.

Additional Divisional Commissioner
and Anr.

....Respondents

**Mr. V. H. Naryekar i/b Ms. Jyoti Yadav, for the Petitioner in
IA No.14167 of 2024.**

**Mr. Abhijit P. Kulkarni a/w Abhishek Roy, Mr. Gaurav
Shahane a/w Shreyas Zarkar, for the Applicant in IA No. 14167
of 2024 – Original Respondent Nos. 3 & 4.**

CORAM : SANDEEP V. MARNE, J.

Date : 22 OCTOBER 2024.

P.C. :

1) Interim Application No. 14167 of 2024 is filed seeking recall of the Judgment and Order dated 12 August 2024 principally on account of the conduct of the Original Petitioner in not complying with the direction issued by this Court for payment / deposit of balance amount of consideration of Rs.15 lakh together with interest within the prescribed time limit. On the other hand Interim Application (ST) No. 30723 of 2024 is filed by Original Petitioner seeking extension of time to deposit the amount as directed by this Court vide order dated 12 August 2024.

2) I have heard Mr. Kulkarni, the learned counsel appearing for Applicant and Mr. Naryekar, the learned counsel appearing for Original Petitioner. For ease of reference, parties to both Interim Applications are referred to by their status in the Writ Petition.

3) By Judgment and Order dated 12 August 2024, this Court set aside order dated 2 November 2023 passed by the Competent Authority and 26 December 2023 passed by the Revisional Authority and granted liberty to Respondent Nos. 3 & 4 to pursue the S.C. Suit No.484 of 2023 filed for cancellation of the Agreement for Sale dated 28 October 2021. Since there were serious dispute amongst the parties about payment of balance consideration of Rs.15 lakh towards the alleged

transaction of purchase of the premises, this Court recorded statement made on behalf of the Petitioner that she would deposit the alleged balance amount of consideration of Rs.15 lakh, without prejudice to her rights and contentions in the pending suit. This Court granted liberty to the Original Petitioner to offer the said amount of Rs.15 lakh along with simple interest @8% p.a. from 1 January 2022 till 31 August 2024 within two weeks of passing of the order. In the event of disinclination being shown by Respondent Nos. 3 and 4 in accepting the said payment, the Petitioner was directed to deposit the said amount along with interest in S.C. Suit No.484 of 2023.

4) Since the Petitioner failed to either offer to the Respondent Nos. 3 and 4 or to deposit in the Court the said amount of Rs.15 lakh along with interest, Respondent Nos. 3 and 4 took out Interim Application No.13324 of 2024 seeking recall of the Judgment and Order dated 12 August 2024. This Court showed an indulgence to the Petitioner after taking into consideration the pretext raised by her about her ill health and extended the time for making payment/deposit of amount of Rs.15 lakh along with interest up to 15 October 2024 subject to payment of costs of Rs.20,000/-. However, by 15 October 2024, the Petitioner neither paid/deposited the amount of Rs.15 lakh nor paid costs of Rs. 20,000/- to Respondent Nos.3 and 4. Accordingly, Respondent Nos. 3 and 4 have taken out Interim Application No. 14167 of 2024 once again seeking recall of the Judgment and Order dated 12 August 2024.

5) Mr. Narvekar, the learned counsel appearing for Petitioner would submit that she has filed Interim Application (ST) No.30723 of 2024 seeking extension of time for deposit of the amount as directed by this Court. Perusal of the said application would indicate that the Petitioner is not ready even today with the entire amount to be paid/deposited as directed by this Court. She has shown willingness to pay/ deposit amount of only Rs.5 lakh when in fact this Court had directed payment/deposit of Rs.15 lakh with further interest @ Rs.8% p.a. from 1 January 2022 onwards. In fact the statement for payment/deposit of amount of Rs.15 lakh was voluntarily made by the Petitioner and this Court was swayed by such willingness shown by the Petitioner, which became one of main factors for setting aside the eviction orders passed by the Competent and Revisional Authorities. Now that the Petitioner has resiled from the voluntary statement for payment/deposit of Rs.15 lakh with interest, the Judgment and Order passed by this Court in her favour setting aside the eviction order will have to be recalled.

6) Even otherwise, Petitioner is a mere licensee in respect of the suit premises and claims to have acquired title on the strength Agreement for Sale dated 28 October 2021. Respondent Nos.3 and 4 have already instituted S.C. Suit No.484 of 2023 seeking cancellation of transaction of sale vide agreement dated 28 October 2021 which is pending. They complain of non-receipt of full amount of consideration. It would

be open for the Petitioner to file appropriate suit for seeking specific performance of the Agreement for Sale dated 28 October 2021 and / or to seek necessary declaration and claim possession of the premises from the Court of competent jurisdiction. As of now, since entry of Petitioner into the suit premises is through the license, which has expired, she will have to vacate the possession thereof. This Court had set aside the eviction order only on account of willingness shown by the Petitioner to complete the sale transaction by paying/depositing remaining amount of consideration of Rs.15 lakh alongwith interest. Now that the Petitioner has failed to pay/deposit the balance amount of consideration with interest despite grant of two opportunities, it is clear that she is not willing to get the transaction of sale completed. The Petitioner has also taken this Court for a ride by violating the statement made before this Court to pay/deposit the balance amount of consideration within stipulated time.

7) Considering the conduct of the Petitioner and also the position that the transaction of sale has remained incomplete on account of non-payment of full amount of consideration, Petitioner cannot be permitted to occupy the premises, entry into which was secured by her through a leave and license agreement. Since leave and license agreement has expired, Petitioner must vacate the possession of the premises and adopt appropriate remedies before Competent Court for recovery of the possession of the suit premises on the strength of the

alleged transaction of sale through agreement dated 28 October 2021.

8) In my view therefore, this Court has otherwise repeatedly held that once entry into the premises is secured through a license, subsequent agreement of sale between the parties (which is disputed) does not entitle a licensee to retain possession of the premises and that the licensee has to adopt necessary remedies before Court of competent jurisdiction for specific performance of the agreement for sale in which necessary orders can be sought from Civil Court for claiming back possession of the premises. In the present case, this Court had adopted an exceptional course of action of setting aside the eviction order after noticing the fact that 85% amount of consideration was already paid by the Petitioner to Respondent Nos.3 to 4 and she was further willing to pay/deposit balance amount of consideration of Rs. 15 lakh together with interest. Now that the Petitioner has resiled from her willingness to pay the balance amount of consideration with interest, the transaction of sale would obviously remain incomplete and title in respect of the premises would not vest in favour of the Petitioner. This is yet another reason, apart from conduct of the Petitioner, for recall of the Judgment and Order dated 12 August 2024. Petitioner, being a mere licensee, cannot squat on the flat without paying full amount of consideration.

9) Mr. Kulkarni has fairly submitted that since the eviction orders are being upheld by dismissing Writ Petition No.5994 of

2024, Respondent Nos.3 & 4 are no longer interested in retaining the amount of Rs.85 lakh received from the Petitioner and are willing to deposit the same before the City Civil Court. This would provide an option for the Petitioner to seek refund of amount paid by her in the event she is no longer interested in completing the transaction.

10) Consequently, I proceed to pass the following order:-

- i. Interim Application (St) No. 30723 of 2024 is rejected.
- ii. Interim Application No. 14167 of 2024 is allowed.
- iii. Judgment and Order dated 12 August 2024 is recalled.
- iv. Writ Petition No.5994 of 2024 is dismissed.
- v. The Respondent Nos.3 & 4 shall deposit the amount of Rs.85 lakh received from the Petitioner in pursuance of the Agreement for Sale dated 28 October 2024 before the City Civil Court in S.C. Suit No.484 of 2023 within a period of 4 weeks from today and the said amount shall be invested in the interest bearing deposits.

11) Nothing observed in the present order shall come in the way of parties exercising their remedies before the Civil Court.

[SANDEEP V. MARNE, J.]