



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 3299 OF 2019

(Sau. Kamlesh Sunil Sharma ..vs. Sunil Bhimraoji Suratkar and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Vinay Dahat, Counsel for the petitioner,
Ms. Gazala Sheikh, Counsel h/f. Mr. D.M. Kale, Counsel for respondent
No.1.

CORAM : ABHAY J. MANTRI, J.

DATE : 19-10-2024

Heard the learned Counsel for both the parties.
Perused the impugned order and record.

2. By this petition, the petitioner is challenging the order dated 07-01-2019 passed below Exhibit 141 in R.D. No.25/2008 passed by the learned Civil Judge, Jr. Dn., Tiosa, District Amravati, whereby discarded the evidence of the petitioner/objector and her witnesses, as well as the order dated 09-03-2018 passed below Exhibit 93 in Regular Darkhast No.25/2008, whereby rejected the objection raised by the petitioner.

3. In brief, the facts are as under :

Respondent No.1-original plaintiff, had filed the suit for declaration, specific performance of contract and possession, which was decreed on 12-01-2004. Against the said judgment and decree, the petitioner had preferred appeal along with the application for condonation of delay, which came to be rejected. Against the said order of the rejection of the application, the

petitioner had preferred Writ Petition No.3305/2007 before this Court, which was dismissed on 06-08-2007. A query was made to the learned Counsel for the petitioner as to whether the petitioner preferred any further proceedings against the said order. He stated that he did not know about it.

4. It further reveals that the judgment and decree passed in Regular Civil Suit No.94/2001 has attained finality. Based on the said judgment and decree, respondent No.1, i.e., the original plaintiff, has filed execution proceedings before the trial Court vide Regular Darkhast No.25/2008 (Old Regular Darkhast No.3/2005).

5. It further reveals that the petitioner has filed application Exhibit 93, contending that judgment and decree are liable to be quashed and not binding upon her for the reasons mentioned therein. The application was rejected on 09-03-2018. However, after the rejection, the petitioner has not preferred any proceeding challenging the same. Subsequently, the Trial Court vide order dated 07/01/2019 passed below Exhibit 141 discarded the evidence of the objector, i.e. the petitioner and her witnesses and thereafter, by this petition; the petitioner is challenging the orders dated 09-03-2018 as well as the order dated 07-01-2019.

6. It is pertinent to note that the appeal, along with the application for condonation of delay preferred by the

petitioner, has been rejected by the first appellate Court, and this Court confirmed the said order vide order dated 06-08-2007 in Writ Petition No. 3305/2007. Therefore, it seems that the judgment and decree passed by the trial Court have attained finality. In execution proceedings, the petitioner is not entitled to challenge the said judgment and decree on the grounds that the Court has no pecuniary jurisdiction to try and entertain the suit. Therefore, the said decree is liable to be quashed and set aside. Thus, I do not find any illegality in the impugned order dated 09-03-2018 passed by the trial Court in that regard.

Secondly, in the execution proceedings, the petitioner filed the pursis and led evidence, and the other side also cross-examined her. However, by passing the order below Exhibit 141, the trial Court has observed as under :

“8. The grounds of objections raised in evidence at Exhibit 95 have already been decided by this court a number of times at Exh.63,64,80,83,85,87 and 93. This court has opinion that J.D.No.2/objector is misusing the provisions of Code of Civil Procedure with intention that decree holder should not get fruit of decree. Therefore, no need to discuss evidence of witnesses of objector, as executing court cannot go behind decree. In these all circumstances I discard evidence of objection and her witness.”

7. In the light of the above discussion, I do not find any perversity or illegality in the impugned order since the judgment and decree passed by the trial Court have attained finality. In execution proceedings, the petitioner

could not have the right to challenge the same on the ground that the Court has no pecuniary jurisdiction.

8. It further emerges that since 2019, the matter before the trial Court has been pending due to the filing of this petition. Similarly, as observed by the trial Court, it appears that the petitioner, by filing one after another application, tried to prolong the matter before the trial Court and thereby abused the process of law when she was aware that the said judgment and decree had attained the finality and, therefore, I deem it appropriate to dismiss the petition with the costs on the petitioner for the same.

9. Hence, the petition is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand) to be deposited with the executing Court within a period of six weeks from today.

On deposit of the costs, Rs.5,000/- (Rupees Five Thousand) will be paid to the decree-holder, and Rs.5,000/-(Rupees Five Thousand) will be credited to the Government account.

If the petitioner fails to deposit the amount as directed, her right to proceed in the matter shall be forfeited.

Inform the Trial Court accordingly.

(ABHAY J. MANTRI, J.)