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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1372 OF 2016

Girish Dharmavir Madan Through Power of
Attorney Holder

PETITIONER

VERSUS

Nandkumar Shankarrao Rasne and Others

RESPONDENTS

.....
Mr. Amol K. Gawali, Advocate for the Petitioner
Mr. Anuj A. Fulfagar, Advocate for Respondent No.1
.....

[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 21st FEBRUARY, 2025

ORDER :

1. Mr. Nikhil S. Jaju, learned Advocate states that he was appearing on behalf of Respondent No.1, however, in view of appearance caused by Mr. Fulfagar on behalf of Respondent No.1, he may be discharged from appearing on behalf of Respondent No.1. In view of the same, Mr. Jaju, learned Advocate is discharged from appearing on behalf of Respondent No.1.
2. This petition arises out of order dated 29th January, 2016 passed by 4th Joint Civil Judge, Junior Division, Ahmednagar below Exhibit-141 in Regular Darkhast No. 175 of 2003.
3. The case of the Petitioner is that the Petitioner is the

Judgment Debtor and Respondent No.1 - Decree Holder in Regular Civil Suit No. 632 of 1983. The Decree Holder had sought possession warrant on the basis of the decree. Though initially, the Executing Court had turned down the request of the decree holder for issuance of possession warrant, the decree holder had challenged the said order by filing Writ Petition No. 8030 of 2011 before this Court. However, this Court has refused to entertain the Writ petition and has confirmed the order dated 27th September, 2011 passed by the Executing Court. Another Writ Petition No. 7676 of 2012, was filed by the decree holder for the same relief. This Court by order dated 12th September, 2012 has dismissed Writ Petition No. 7676 of 2012 observing that subsequent writ petition for the same relief cannot be entertained. The decree holder, thereafter, again filed Writ Petition No 6249 of 2015 without pointing out filing of earlier two Writ Petitions, as a result this Court has passed an order on 17th November, 2015, thereby set aside the order passed by the Executing Court below Exhibit-117 and allowed the application Exhibit-117 and further directed the Executing Court to pass consequential order of issuance of possession warrant.

4. In view of the same, the Petitioner filed Review Application No. 1 of 2016 in Writ Petition no. 6249 of 2015, by pointing out

the earlier orders passed by this Court wherein this Court has refused to interfere with the orders passed by the Executing Court. However, the Review Application was rejected. Therefore, Petitioner filed SLP No. 3250-3251 of 2016 in the Supreme Court challenging order dated 12th January, 2016. During the pendency of the SLP before the Supreme Court, the Petitioner had filed application Exhibit-141 in the Execution Petition praying to stay the effect of issuance of possession warrant. The Executing Court, while rejecting application Exhibit-141 has observed that though this Court had granted sufficient time while deciding Writ Petition No. 6249 of 2015, and the time granted by this Court has already expired, the Petitioner could not secure positive orders from the Supreme Court, therefore, the decree holder cannot be denied the fruits of the decree.

5. In the meanwhile, according to the Petitioner, he has purchased portion of the suit property from one of the joint owner and claimed entitlement to the property as owner of the part of the said premises on the basis of the rights purchased. He had filed a suit for partition and separate possession. In the said suit, a decree is passed, determining shares of the parties to the suit. However, some defendants preferred Appeal against the said decree. The decree has been modified in Regular Civil

Appeal No. 9 of 2005 to the extent of shares receivable by the parties. Second Appeal is also preferred against the order passed in Regular Civil Appeal No. 9 of 2012, When the order below Exhibit-141 dated 29th January, 2016 was challenged in present Writ Petition, this Court on 3rd February, 2016 passed an order observing about the developments that had taken place. The SLP filed by the Petitioner was still pending before the Supreme Court when order dated 3rd February, 2016 was passed by this Court and the SLP was posted for hearing on 8th February, 2016. In view of pendency of the SLP before the Supreme Court, this Court has passed an order directing the parties to maintain *status quo* till 15th February, 2016.

6. Learned Advocate for the Petitioner submits that when the matter was listed before the Supreme Court on 8th February, 2016, the Supreme Court has passed an order requesting this Court to dispose of the Second Appeal expeditiously and preferably within a period of six months from the date of the order. It was further directed that the proceedings of dispossession of the Petitioner from the tenanted premises shall be deferred till such time.

7. In the meanwhile, the Second Appeal which was pending

before this Court was decided by this Court by order dated 30th June, 2016. Though the Second Appeal is dismissed by this Court, stay to the execution of decree of eviction was deferred till actual partition is effected as per the decree, which is subject matter in the Second Appeal i.e. suit for partition and separate possession.

8. SLP No. 3250-3251 of 2016 was decided by the Supreme Court by its order dated 5th August, 2016. While deciding the SLP, the Supreme Court has directed the Executing Court to take steps to appoint Court Commissioner in the final decree proceedings so as to identify the respective shares. This was to be completed within a period of two months from the date of production of copy of the said order by either of the parties before the Trial Court and till such time, the eviction proceedings as against the Petitioner was directed to be kept in abeyance.

9. The Supreme Court had made it clear that the special leave petition filed against the judgment in Second Appeal No. 611 of 2010 shall have no bearing on the eviction proceedings.

10. Learned Advocate appearing for Respondent No.1 points out that so far as subject matter of the present Writ Petition is concerned, it is limited only to the application made by the Petitioner seeking stay to the Execution Proceedings for one

month, pending the SLP. Efficacy of that application has been lost in view of the subsequent developments. Learned Advocate for the Petitioner, on instructions, points out that the Execution Petition itself has been disposed by the Executing Court by order dated 17th April, 2017. It is submitted that possession of the suit property has been handed over to the decree holder by the bailiff and report, Panchanama, as well as possession receipt have been filed on record. It is observed that the possession receipt shows that the possession of the suit property is given to the decree holder on 4th January, 2017. The decree holder has appeared before the Court and has given pursis at Exhibit-183 stating that he has received possession of the suit property. Hence, the decree has been satisfied and in view of the fact that Regular Darkhast No. 175 of 2003 is disposed of this Writ Petition has been rendered infructuous. Copy of order dated 17th April, 2017 passed below Exhibit-1 in Regular Darkhast No. 175 of 2003 is taken on record and marked "X" for identification.

11. Since the present Writ Petition is limited only to the extent of order passed below Exhibit-141 in Regular Darkhast No. 175 of 2003 and since Regular Darkhast No. 175 of 2003 itself has been disposed of by the Executing Court, by order dated 17th April, 2017, nothing survives to be adjudicated in this Writ Petition.

However, considering the subsequent developments that have taken place in the matter, the parties are at liberty to take recourse to appropriate proceedings. With these directions, the Writ Petition is disposed of.

[MANJUSHA DESHPANDE]
JUDGE

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