

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10479 OF 2024

Harsh Constructions

.. Petitioner

Versus

Sushma Vinay Bajpai and Anr.

.. Respondents

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- Mr. Anosh Sequeria a/w. Niti Panchasara, Advocates i/by M/s. A.V. Jain and Associates for Petitioner.
 - Ms. Premlata Modani, Advocate for Respondents.
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CORAM : MILIND N. JADHAV, J.

DATE : JULY 14, 2025.

P.C.:

1. Heard Mr. Sequeira, learned Advocate for Petitioners and Ms. Modani, learned Advocate for Respondents.

2. It is surprising that despite the present Petition having been decided by order dated 30.07.2024 in respect of the principal issue, *inter alia*, relating to delivery and possession of the subject flat, the Petition is still languishing in this Court for the past one year regarding the subsidiary issue of date of grant of interest. Respondent's execution proceeding is stalled and protracted because of the pendency of the Petition.

3. Direction contained in paragraph No.9 of the above order pertains to payment of interest which has been granted from July 2008

rather than the date on which the possession of the said flat was promised to be delivered under the Agreement to Respondent No.1.

4. There is no dispute about the fact that possession of the said flat was agreed to be given to Respondent No.1 as per the Agreement in June 2008 and therefore admittedly the date of commencement of interest in the impugned order has to be on and from 01.07.2008 onwards and it cannot be the date from which the payments were made under the Agreement for Sale to Petitioner by Respondent No.1. To that extent the dichotomy *prima facie* exists in the operative clause (III) of the impugned order appended at page No.449 of the Petition. The operative part is appended at page No.464 of the Petition.

5. The aforesaid issue is the only issue required to be now settled and decided in the present Petition and nothing more in view of the order dated 30.07.2024 passed by this Court (Coram: Avinash G. Gharote, J.).

6. On perusal of the impugned order, it is *prima facie* seen that the National Commission has directed payment of simplicitor interest @ 8% per annum on the amount stated in clause (III) from the date of deposit till the date of handing over the possession of the unit to the Respondent. To that extent clause (III) will therefore have to be modified and the date of payment of interest will begin to run from 01.07.2008 and not from the date of deposit (as agreed).

7. After perusing the impugned order and hearing the parties, I direct payment of simplicitor interest @ 9% per annum to Respondent No.1 on the amount from 01.07.2008 onwards until the date of handing over possession of the unit to the Respondent No.1 (as agreed). To that extent clause (III) shall stand modified. Rest of the impugned order shall remain as it is.

8. Learned Advocate appearing for the Respondent No.1 has persuaded me to hear the Respondent No.1 who is present in Court. Respondent No.1 has made a grievance that every attempt for reconciliation has not fructified though there has been correspondence, meetings and communication between the parties. Hence she has made a request to the Court that being first time litigant she has virtually exhausted all the energy and is at the mercy of the legal system. Respondent No.1 should not feel so. The fact that this Court in the order dated 30.07.2024 has applied its mind and has given cogent reasons in upholding the order dated 22.12.2023 is itself a victory in itself for the private Respondent No.1 before me. Respondent No.1 should therefore not feel dejected. Yes she may be right that due to pendency of the present Petition for the past one year, she has faced the ignominy of the Execution proceedings being stalled and dragged over from time to time.

9. In that view of the matter after the Respondent No.1's request, I am inclined to consider the earnest request made by her before me and direct the Executing Court to determine the Execution proceedings namely Execution Proceeding No.50 of 2024 as expeditiously as possible and in any event within a period of two months from today. All contentions of the parties thereto are expressly kept open.

10. Needless to state that the Execution Court shall determine the proceedings as directed by following the due process of law and any attempt of any of the parties to protract the proceedings shall not be allowed unless it is in the case of a genuine exigency and not otherwise. If required the Execution Court shall take the proceedings on a day to day basis and determine the same as directed.

11. Writ Petition is accordingly allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

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