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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17343 OF 2024

Rajeev Girdharilal Pittie
and ors

.....Petitioners

Vs.

M/s. Sky Lounge Estates Private
Ltd

.....Respondent

Mr. Pankaj Savant, Senior Advocate a/w Mr. Arjun Savant, Mr.
Anshuman R. Asare for the petitioners

Mr. Tejesh Dande, Mr. Sarvesh Deshpande, Mr. Pratik Sabrad, Mr.
Bharat Gadhavi, Mr. Aniket Shitole, Ms. Mansi Pnde, Mr. Vinayak
Shelar for the respondent

CORAM : GAURI GODSE, J.

DATE : 7th JULY 2025

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ORDER:

1. Heard learned counsels for the parties. This petition is filed to challenge the order issuing possession warrant against these petitioners. There is no dispute that these petitioners are judgment-debtors. The decree under execution is passed by the Trial Court on 18th January 2016. The first appeal preferred by these petitioners is dismissed. The decree is challenged by these

petitioners in second appeal with an application for condonation of delay of 841 days.

2. In the application for condonation of delay in the second appeal, the statement is made on behalf of these petitioners that they press the second appeal only with regard to flat no. 502. This order in the second appeal is passed on 7th October 2024. In the present petition, argument is made on 9th October 2024 to challenge the possession warrant issued in respect of flat nos. 401, 402 and 501. It is argued on behalf of the petitioners that this Court has framed substantial questions of law in the second appeal in respect of only flat no. 502. Though same counsel has argued the second appeal as well as the writ petition, it is not pointed out before the Writ Court that in view of the statement made regarding pressing the second appeal only for flat no. 502, possession warrant is stayed only for flat no. 502, in the the second appeal.

3. Learned counsel appearing for the decree holder, therefore, moved this writ petition and pointed out the order passed in the second appeal on 7th October 2024. Learned counsel for the decree holder makes a serious grievance about the statement

made before the writ Court. He submits that the statement made in the second appeal is recorded in paragraph 4 of order dated 7th October 2024. He submits that in the second appeal, by making a specific statement that the petitioners would press the second appeal only for flat no. 502, they secured a stay to possession warrant only with regard to flat no. 502. He submits that despite making such statement in the second appeal on 7th October 2024, writ petition was argued on 9th October 2024 by making a statement that this Court has framed substantial questions of law only in respect of flat no. 502. Accordingly, the petition was argued raising the objection to the execution proceedings with regard to flat nos. 401, 402 and 501. He submits that thus, this is a dishonest attempt on the part of the judgment-debtors to seek relief from two different Courts for stay of flats which is subject matter of the execution proceedings.

4. Learned senior counsel appearing for the petitioners justifies the submissions made on behalf of the petitioners. He submits that even if the petitioners made a statement in the second appeal that they will press the second appeal only for flat no. 502, the

petitioners would be entitled to raise objections to the possession warrant issued for flat nos. 401, 402 and 501, though the decree has attained finality. Learned senior counsel for the petitioners sought to justify the conduct of the petitioners by arguing that defendant no. 1 i.e. M/s. Keshav Property Developers were represented through partner Mr. Girdharlal Mukundlal Pittie who is deceased. He submits that the present petitioners are partners of M/s. Keshav Property Developers. On this ground, learned senior counsel for the petitioners raises an objection to the possession warrant issued by the order impugned in the present petition.

5. I do not find substance in the arguments raised on behalf of the petitioners. There is no dispute that these petitioners were defendant nos. 4, 5 and 6, and are the judgment-debtors. The impugned decree passed by the Trial Court on 18th January 2016 directs the defendants which includes these petitioners to execute the sale deed for flat nos. 401, 402 and 501 and directs them to deliver possession. This decree is confirmed by the First Appellate Court on 14th March 2022. The First Appellate Court directed handing over of possession of flat nos. 401, 402, 501 and 502.

This decree by the First Appellate Court is the subject matter of challenge in the Second Appeal Stamp No. 28452 of 2024. A perusal of order dated 7th October 2024 in the second appeal clearly shows that in paragraph 4 of the order, a statement on behalf of the petitioners is recorded that they would press the second appeal only to the extent of the First Appellate Court's decree regarding specific performance of the contract for the fourth flat i.e. flat no. 502. Based on these statements made on behalf of the petitioners, and on instructions regarding deposit of the decretal amount, notice is issued by this Court in the application for condonation of delay in filing the second appeal. Subject to the compliance of the undertaking given regarding deposit of the amount, this Court stayed the possession warrant, if any, issued with regard to flat no. 502.

6. With reference to this order dated 7th October 2024, submissions were made by the same senior counsel appearing for the appellants in the second appeal that the petitioners have filed the second appeal and this Court has framed substantial questions of law in respect of only flat no. 502. The order dated 9th

October 2024 in this petition nowhere records any submissions made on behalf of the petitioners regarding the statement made that the second appeal is pressed only for flat no. 502 and further directions issued in the second appeal regarding issuing notice in delay condonation application and granting protection with regard to only flat no. 502. Thus, it is clear that by making a statement in the second appeal that the second appeal would be pressed only for flat no. 502, this Court in the second appeal was persuaded to grant protection against the possession warrant issued with regard to flat no. 502. After securing this relief in the second appeal, the writ petition was argued on 9th October 2024 and interim relief was secured with regard to the remaining three flats.

7. Thus, I have no manner of doubt that by making misleading statement in the writ petition, a stay is secured to the remaining flats after giving up the claim in respect of these flats by making a statement in the second appeal. Such conduct on the part of the parties needs to be deprecated. The aforesaid attempts made on behalf of the petitioners is nothing but to stall the execution of the decree which stands confirmed. For making such statements for

securing two different reliefs from two different Courts, and for suppressing in the writ petition about the statement made in the second appeal, it is appropriate that the petitioners are saddled with appropriate cost.

8. The order impugned in the petition is issuing possession warrant in respect of flat nos. 401, 402 and 501. In view of the statement made in the second appeal, these petitioners have given up their claim on these flats. Therefore, the decree for possession of these flats is confirmed against these petitioners who are judgment-debtors. The petition is therefore, devoid of any merit. Hence, the Writ Petition is dismissed.

9. For successfully stalling the decree which stands confirmed, the petitioners, for making different statements in the second appeal and this writ petition and securing reliefs from two different Courts with regard to all the flats which are subject matter of the decree under execution, the amount of cost is quantified at Rs. 1,00,000/- to be paid by the petitioners to the decree holder. The amount shall be deposited in the Executing Court within four weeks from today. The decree holder shall be entitled to withdraw

the amount of cost that the petitioners would deposit in the Executing Court.

10. At this stage, learned senior counsel for the petitioners submits that his submission may be recorded that the scope of second appeal and the present petition is different; hence, even if the petitioners have given up their claim in the second appeal, they would be entitled to raise objections to the execution of the decree as available in law. I do not find substance in such request. There is no dispute that these petitioners are judgment-debtors. The ground sought to be argued in this petition is based on death of one of the partners of defendant no. 1. The ground that the petitioners are not the partners of defendant no. 1 is immaterial when the decree for specific performance of a contract and the possession stands confirmed against these defendants.

11. At this stage, learned senior counsel seeks stay of this order. I do not see any reason to stay this order in view of the reasons recorded in the preceding paragraphs. Hence, the prayer for stay is rejected.

[GAURI GODSE, J.]