

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 628 OF 2024

Shantinath Darshan Co-operative Housing
Society Ltd.

...Applicant

Versus

Fulwantibai Chhaganraj Rathod and ors.

...Respondents

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Mr. Saurish Shetye, i/b Shamrao Gore, for the Applicant.

Mr. Joel D'souza, a/w Ivor Peter D'cruz and Pierre Fernandes,
i/b Ivor Peter D'cruz, for Respondent Nos.1 and 5.

CORAM: N. J. JAMADAR, J.

DATED : 13th JANUARY, 2025

ORDER:-

1. This revision application is directed against an order dated 5th November, 2024 passed by the learned Judge, City Civil Court, Greater Bombay, in Notice of Motion No.3583 of 2024 in SC Suit No.8489 of 1993 taken out by the applicant – defendant No.4 to pass a compromise decree in terms of the writing dated 29th November, 1994 executed between the plaintiffs – defendant Nos.1 to 3 under the provisions of Order XXIII Rule 3 of the Code of Civil Procedure, 1908. Respondent Nos.1 to 6 – original plaintiffs have instituted Suit No.8489 of 1993 (original High Court Suit No.1 of 1993) for various reliefs.

2. The genesis of the suit is in a Development Agreement, which was purportedly executed by plaintiff No.1 in favour of

M/s. Mehta and Chhajad Developer and Builders to develop the suit property, on 25th March, 1987. Disputes arose between the plaintiffs and defendant Nos.1 to 3 over the compliance of the terms of the Development Agreement. The plaintiffs professed to terminate the Development Agreement alleging breach of the Development Agreement dated 25th March, 1987 and the Supplemental Development Agreement dated 19th September, 1991.

3. The applicant – defendant No.4, which is a Co-operative Housing Society of the flat purchasers of the flats in the building erected at the suit property, registered under the provisions of Maharashtra Co-operative Housing Societies Act, 1960, came to be impleaded as a party defendant to the suit.

4. The applicant had instituted Suit No.5416 of 2006 against plaintiff Nos.1 and 2 and the Developers. By a judgment and decree dated 7th March, 2012 the defendants therein were directed to execute a conveyance of the entire suit property, being the building and land, in favour of the applicant society, after obtaining occupation certificate and permanent injunction has also been granted against the defendants therein.

5. The applicant took out a Notice of Motion with the assertion that during the pendency of the suit on 29th

November, 1994 there was an out of Court Settlement between the plaintiffs and defendant Nos.1 to 3, which is recorded in the form of an undertaking before the police. Thus, a decree be passed on the basis of the said settlement arrived at between the plaintiffs and defendant Nos.1 to 3.

6. The plaintiffs resisted the prayers in Notice of Motion.

7. It seems defendant Nos.1 and 2 supported the application and stated that they had no objection to allow the prayers in the Notice of Motion.

8. The learned Judge was of the view that there was no lawful and valid compromise between the plaintiffs and defendants Nos.1 to 3. Only plaintiff No.1 was the signatory to the said writing. Rest of the plaintiffs were not agreeable to the disposition of the suit on the basis of the said compromise. Defendant No.4 was not even a party thereto. In fact, the plaintiffs amended the plaint and sought additional prayers in relation to the said writing i.e. prayer clause (d-1). Even otherwise, the said writing did not incorporate all the necessary terms to spell out a complete resolution of the dispute between the parties.

9. Mr. Shetye, the learned Counsel for the applicants, made an endeavour to persuade to the Court to hold that defendant

No.4 is entitled to take the benefit of the said compromise arrived at between plaintiff Nos.1 to 3. The fact that plaintiff No.1 alone was the signatory to the said writing did not matter as the rest of the plaintiffs were bound by the same and all the plaintiffs have derived benefit under the said writing. Thus, the learned Judge could not have rejected the Notice of Motion without embarking upon an enquiry as to whether there was such a settlement, whether the settlement was lawful and whether a decree could have been passed on the strength of the said settlement.

10. Mr. D'souza, the learned Counsel for respondent Nos.1 to 4, on the other hand, submitted that the application was preferred with an oblique motive to delay the disposal of the suit which has been instituted in the year 1991. Attention of the Court was invited to the orders dated 8th March, 2024 and 10th July, 2024, wherein this Court had directed the trial court to expeditiously decide the suit in terms of the earlier orders stipulating a time frame for the disposal of the suit.

11. Having perused the impugned order, I am of the view that the learned Judge, City Civil Court, committed no error in rejecting the Notice of Motion, which would warrant interference in exercise of revisional jurisdiction. First and foremost, the

said writing was purportedly executed before the police at Malad Police Station. It is not a settlement which was arrived at between the parties, and tendered, before the Court. That brings in the element of voluntariness of the parties to the said purported settlement. Second, there is a serious dispute about the binding character of the compromise as manifested in the writing dated 29th November, 1994 as apart from plaintiff No.1, the rest of the plaintiffs are not parties thereto. Third, can defendant No.4 enforce the said writing and derive benefit thereunder is again a matter, which warrants adjudication. Fourth, there is a dispute between the parties over the import and compliance of the terms of the said writing, and, thus, by amending the plaint, the plaintiffs have sought additional reliefs in respect of the said writing as well.

12. In the face of the aforesaid factors, the learned Judge, City Civil Court, was justified in declining to give the court's imprimatur to the purported settlement. At best, the said writing could be relied upon as an admission. It is trite an admission can be shown to be incorrect. Even if the said writing is construed to be an admission within the meaning of Order XII Rule 6, yet, it is not obligatory on the part of the Court to pass a decree on admission as the power under Order XII Rule 6 is

discretionary in nature. A judgment on admission is not a matter of right and rather is a matter of discretion of the Court.

13. For the foregoing reasons, I am not inclined to interfere with the impugned order in exercise of revisional jurisdiction as there is neither a jurisdictional error nor such procedural defect or perversity as would merit interference.

14. Application dismissed.

[N. J. JAMADAR, J.]