IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15354 OF 2024

Smt. Pratibha Achyut Ketkar
Since deceased, through her legal heirs. ....Petitioners

V/S

Mohan Narayan Bhagwat and Anr. ....Respondents

Mr. Tejas Deshmukh for the Petitioners.

Mr. S.N. Chandrachood for the Respondents.

CORAM : SANDEEP V. MARNE, J.
DATE : 17 APRIL 2026.

P.C.:

1. By this Petition filed under Article 227 of Constitution of India, Petitioners challenge judgment and decree dated 7 May 2024 passed by the District Judge, Pune allowing Regular Civil Appeal No.518 of 2015 and setting aside the judgment and order dated 20 August 2015 passed by the Trial Court in Civil Suit No.60 of 2012. The Appellate Court has decreed the suit by directing the Petitioners/Defendants to handover possession of the suit premises to the Plaintiffs. The suit is decreed by the Appellate Court on the ground of *bonafide* requirement of Plaintiffs in respect of the suit premises.

2. Residential premises situated on the ground floor, admeasuring 600 square feet comprising of one bed room, hall, kitchen with toilet and bathroom in house property situated at City Survey No.212/15, Survey No.1(part), sub-plot No.A1/15, Rambaug Colony, Sadashiv Peth, Pune are the '**suit premises**'. The house property in which suit premises are located was owned by father of Plaintiff No.1 and father-in-law of Plaintiff No.2-Late Narayan Kashinath Bhagwat. On said plot of land, the owner constructed ground floor structure after death of Late Narayan Kashinath Bhagwat. Plaintiffs claim ownership in respect of the land and the structure. Late Narayan Kashinath Bhagwat had inducted Dr. Achyut Laxman Ketkar as the monthly tenant in respect of the suit premises. Dr. Achyut Laxman Ketkar passed away in 1988. The Defendant is the wife of Dr. Achyut Laxman Ketkar, in whose name rent receipt was transferred.

3. According to Plaintiffs, Defendant did not need the suit premises since one of her sons was settled in America and second son was ENT Expert and was residing at Pimple Nilakh in his own house. The daughter of Defendant was married 40 years ago and was residing at her husband's place. Plaintiffs contended that they were residing in adjoining premises admeasuring 1200 square feet. That son of Plaintiff No.1 was of marriageable age and Plaintiffs needed additional space for his separate residence. In the year 1980, Late Narayan's daughter and son-in-law constructed additional premises admeasuring 1000 square feet on first floor. That after death of Narayan's daughter and son-in-law, Plaintiff No.2 shifted to the premises on the first floor. Plaintiffs claimed that the suit premises were not in use since the year 2009. Accordingly, Plaintiff served notice dated 2 November 2011 to the Defendant

demanding possession of suit premises. Plaintiff instituted Suit No.60 of 2012 in the Small Causes Court, Pune for recovery of possession of suit premises from the Defendant. Defendant appeared in the suit and filed Written Statement. Defendant contended that Plaintiffs executed Development Agreement (**DA**) dated 11 July 2006 with Badve Construction Private Limited (**Badve Constructions**), who executed Memorandum of Understanding (**MoU**) dated 16 July 2006 with the Defendant for allotment of flat on ownership basis in lieu of the tenanted premises. Based on pleadings, the Trial Court framed issues *inter-alia* relating to grounds of *bonafide* requirement and non-use of the suit premises. The Trial Court also framed issues relating to existence of landlord-tenant relationship on account of execution of DA and MoU. Parties led evidence in support of their respective claims. Plaintiff No.1 examined himself. Similarly, Defendant examined herself in addition to examining Shrinivas Tukaram Badve as DW-2. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to dismiss the suit by judgment and decree dated 20 August 2015 holding that relationship of landlord and tenant had come to an end on account of DA executed by the Plaintiffs with the Developer. The Trial Court also rejected the ground of *bonafide* requirement and non-use.

4. Plaintiffs filed Regular Civil Appeal No.518 of 2015 in the Court of District Judge, Pune challenging the Trial Court's decree. It appears that Defendant expired during pendency of the Appeal. The Appellate Court has allowed the Appeal preferred by the Plaintiffs by setting aside the decree passed by the Trial Court, the Appellate Court has decreed the

suit on solitary ground of *bonafide* requirement while rejecting the ground of non-use. The Appellate Court has directed the Defendant to handover possession of suit premises to the Plaintiff. Legal heirs of deceased Defendant are aggrieved by the judgment and decree passed by the Appellate Court and have accordingly filed the present Petition.

5. Mr. Tejas Deshmukh, the learned counsel appearing for the Petitioner submits that the Appellate Court has grossly erred in reversing well considered decision of the Trial Court. That the suit filed by the Plaintiffs was premised on gross suppression of execution of DA with Badve Construction. That Plaintiffs also suppressed the factum that Badve Construction executed MoU with the Defendant-tenant promising to allot flat on ownership basis in the new building. That it was the duty of the Plaintiffs to approach the Court with clean hands. He relies on judgment of this Court in ***Tarakchand Hassaram Shamdasani Versus. Durgashankar G. Shroff and Ors.***[1] in support of his contention that it is the duty of Plaintiff to disclose all relevant facts in the Plaint. He submits that since Defendant had acquired right to secure flat on ownership basis on account of execution of DA and MoU, the landlord-tenant relationship had come to an end. That the Trial Court had rightly appreciated this aspect which is totally ignored by the Appellate Court. That Defendant-Tenant also paid part consideration of Rs.5,000/- upon execution of MoU dated 16 January 2007. That instead of considering this aspect in the right perspective, the Appellate Court has erroneously held that execution of DA did not nullify Plaintiffs *bonafide* requirement.

1 (2004) Supp 1 Bom CR 333

6. Mr. Deshmukh further submits that Plaintiffs case of Defendants not using the suit premises is negatived both by the Trial and Appellate Courts. He submits that mere non-fructification of DA on occurrence of subsequent events cannot be a ground for ignoring the effect of execution DA. That the DA subsisted at the time of filing of the suit and it was duty of the Plaintiff to disclose its execution. That subsequent events cannot infuse life into the dead suit, which was inherently defective and suffered from gross suppression.

7. So far as the ground of *bonafide* requirement is concerned Mr. Deshmukh submits that Plaintiffs were found to be in possession of substantial residential portion on the ground and first floor of the structure. That the need expressed by Plaintiff was a merely fanciful desire and not a *bonafide* or genuine requirement. That the Trial Court has rightly rejected the ground of *bonafide* requirement by observing that the suit was filed for avoiding grant of ownership of flat to the Defendant by raising false pretext of *bonafide* requirement. That Plaintiffs are found to be in possession of area admeasuring 3000 square feet. Mr. Deshmukh would accordingly pray for setting aside the order passed by the Appellate Court and for confirming the Trial Court's order.

8. The Petition is opposed by Mr. Chandrachood, the learned counsel appearing for Respondents/Plaintiffs. He submits that execution of the DA cannot have any effect on subsistence of landlord-tenant relationship. That the DA did not fructify into redevelopment of the structure. That Badve Construction has not moved even an inch towards redevelopment of the structure for the last 20 long years and has now

filed suit for specific performance of the DA. That Plaintiffs' *bonafide* requirement in respect of the suit premises is rightly held to be proved by the Appellate Court. On the other hand, Defendants have not been using the suit premises, which are lying locked after death of original tenant Pratibha on 26 March 2017. He submits that Petitioner No.1(c)–Shobhana is resident of Aundh, at which address summons of Appeal was served on her. That she has deliberately given false address of suit premises when she is permanent resident at an altogether different premises. That Shobhana is divorced from her husband and has also received flat on ownership basis from her husband. That she resides with her son and has absolutely no connection with the suit premises. That Petitioner No.2 is a permanent resident of USA. That the address of Petitioner No.1 is described as Sahakarnagar, Pune, admitting that he is not a resident in the suit premises. Thus, none of the Petitioners reside in the suit premises and have unnecessarily filed the present Petition to delay execution of the Appellate Court's decree.

9. Mr. Chandrachood further submits that Plaintiffs *bonafide* requirement is rightly held to be proved since the premises are needed for separate residence of the son after his marriage. He submits that there is no element of perversity in findings recorded by the Appellate Court. He therefore prays for dismissal of the Petition.

10. Rival contentions urged on behalf of parties now fall for my consideration.

11. The Trial Court had dismissed the suit of the Plaintiffs mainly taking note of execution of DA with the Plaintiffs by Badwe Constructions and execution of MoU with the Defendant-tenant agreeing to provide flat admeasuring 500 square feet in the newly constructed building. The Trial Court viewed and determined the ground of *bonafide* requirement from the prism of execution of DA and MoU and proceeded to reject the said ground. The Trial Court held in paragraphs 14 and 15 of the judgment as under:

> [14] The Court is of the view that plaintiff has admitted hat he has entered into agreement with Badve Constructions Pvt. Ltd. and he has received the consideration from the said Badve Constructions Pvt. Ltd. said agreement has been registered. Hence, there is no doubt that he has parted with interest in the property in favour of Badve Constructions Pvt. Ltd. So in this background, plaintiff is not entitled to seek for possession of the suit premises from defendant.
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> Court is of the view that as per MOU, Badve Constructions Pvt. Ltd. agreed to provide flat to the defendant on ownership basis and he has received the consideration. Defendant has examined Shrinivas Tukaram Badve (D.W.2) (at Exh.51). it has come in his evidence that plaintiff has entered into Development Agreement with him and executed Power of Attorney in his favour. He brought original Development Agreement and Power of Attorney in Court. He furnished xerox copy of the said Development Agreement and Power of Attorney. Said agreement is registered at Haveli No.16, it bears signature of Manohar Narayan Bhagwat, Shubhada Manohar Bagwat and Rama Shrinivas Nagarkar. Development Agreement is marked at Exh. 52 and Power of Attorney document is marked at Exh. 53. He stated that owner had given authority to him to deal with the tenant, therefore he entered into MOU with one tenant Pratibha Ketkar i.e. present defendant on 16.1.2007. MOU is marked at Exh. 37. He admitted the contents and signature thereon. He also admitted that Pratibha Ketkar paid Rs. 5,000/- towards part consideration of the MOU. He issued receipt vide Exh. 34. As per construction plan, it is submitted that construction plan is also sanctioned the Corporation and he is ready to construct building as per Development Agreement and ready to give flat admeasuring 500 sq.ft. to defendant in new constructed building. So as per the evidence of D.W. 2 Shrinivas Tukaram Badve, it is clear that he has paid consideration to the plaintiff and also received consideration from the defendant for providing him flat on ownership

> basis. So in this background, relation between plaintiff and defendant has been changed. Now plaintiff does not remain as landlord and defendant does not remain as tenant of plaintiff.
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> [15] In the background of Development Agreement and Power of Attorney executed by plaintiff in favor of Badve Constructions Pvt. Ltd., Court is of the view that instead of performing terms and conditions of the Development Agreement and MOU, plaintiff sought possession directly from defendant on the ground of bona fide requirement. Plaintiff has not cancelled the development agreement. If plaintiff gets the possession of the suit premises, then he will not have to provide residential, accommodation in the new building to the defendant on ownership basis. So it is clear that need of plaintiff is not bona fide but it is malafide.

12. In my view, the Trial Court had committed an error in deciding the issue of *bonafide* requirement by taking into consideration the factum of DA and MoU. Execution of DA and MoU was mainly relied upon by Defendant No.2 to buttress upon the Court that landlord-tenant relationship had come to an end. In fact, the Trial Court had framed Issue No.6 about existence of landlord-tenant relationship after execution of the DA, the said issue is answered by referring to provisions of Section 4 and 4A of The Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management and Transfer) Act, 1963. The Trial Court recorded following findings in paragraphs 23 and 24 while answering Issue No.6 relating to existence of landlord-tenant relationship:

> [23] Defendant has contended that relationship of landlord and tenant between plaintiff and defendant comes to an end because of development agreement made by plaintiff with Bidve Construction Pvt. Ld. The Counsel on behalf of plaintiff submitted that Memorandum of Understanding which is executed between Badve Construction and defendant is not registered and therefore, it is not admitted U/s. 4 of the Maharashtra Ownership Flats and Apartments Act, 1970. In reply, Ld. Counsel on behalf of defendant submitted that said document (MOU) is admissible U/s. 4A of the Maharashtra Ownership Flats and Apartments Act, 1996.

> In Sec. 4 of the Maharashtra ownership Flats and Apartments Act, 1970 it is provided that "promoter before accepting advance payment or deposit to enter into agreement to be registered".
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> In Section 4A it is provided that where an agreement for sale entered into under sub section 4, whether entered into before or after the commencement of the Maharashtra ownership Flats (Regulation of the promotion of construction, sale management and transfer) amendment and validating provisions) Act, 1983, remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or any judgment, decree or order of any court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of Section 53A of the transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.
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> [24] In the present facts and circumstances of the case, defendant has admitted that agreement is not registered and Memorandum of Understanding has been executed with him and she has paid the part consideration of Rs. 5,000/- to Badve Constructions Pvt. Ltd. So to prove this fact, unregistered document is admissible in evidence. Hence, this issue is answered accordingly.

13. It must be observed that it takes efforts to comprehend the exact findings recorded by the Trial Court in paragraphs 23 and 24 of the judgment. The Trial Court has merely decided the issue whether unregistered document can be taken into consideration *qua* deciding Issue No.6. However, there is no answer on the point as to whether landlord-tenant relationship ends with execution of DA. In the present case it is an admitted position that the DA executed with Badwe Constructions has not materialized into even commencement of construction of new building and the structure in which suit premises are located still continues to exist. In such circumstances, it cannot be inferred that the landlord-tenant relationship came to an end merely on execution of DA with a Developer by the Plaintiffs. If the contention of

Defendants is accepted, the same would mean that she/they became entitled to occupy the suit premises without paying rent merely on account of execution of DA. Mere Agreement between landowner and Developer to reconstruct structure would not bring to an end the landlord-tenant relationship. It is only after the transaction of sale/allotment of PAA is complete through a registered instrument that landlord-tenant relationship comes to an end. In my view therefore, the Trial Court had grossly erred in answering Issue No.6 in the affirmative. It committed further error in deciding the issue of *bonafide* requirement on the basis of execution of DA and MoU.

14. The issue of mere execution of Agreement for Sale not brining to an end landlord-tenant relationship is settled in ***H.K. Sharma vs. Ram Lal***[2] in which it is held thus:

> 22. The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.
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> 30. A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (*e*) or (*f*) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (*e*) or implied surrender under clause (*f*) of Section 111 of the TP Act.

2 (2019) 4 SCC 153

31. It is for this reason, the law laid down by this Court in ***R. Kanthimathi*** [*R. Kanthimathi* v. *Beatrice Xavier*, (2000) 9 SCC 339] has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow: (SCC p. 341)

> "*4*. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:
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> 'I the aforesaid Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs 25,000.
>
> I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs 5000 (Rupees five thousand only) at the time of registration *and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession*.'"
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> (emphasis in original)

The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

32. As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

33. In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained unaffected notwithstanding execution of the agreement dated 13-5-1993

15. Thus mere execution of the DA or MoU would not bring to an end the landlord-tenant relationship especially in the facts of the present case where the DA has failed to materialize for the last 16 long years.

16. Mr. Deshmukh has strenuously contended that the suit filed by the Plaintiffs was defective on account of non-disclosure of execution of DA and MoU. The DA was executed with Badwe Constructions on 11 July 2006. The suit was instituted six years later on 18 January 2012. Nothing had happened during the gap of six years as the Developer failed to take even a single step towards reconstruction of the structure. In that view of the matter, the factum of execution of DA was not germane to the ground of *bonafide* requirement and non-user as pleaded in the plaint. It is well settled position that suppression must be of fact material for deciding issue involved in the case. For deciding the issue of *bonafide* requirement and non-use, the factum of execution of DA was irrelevant. Even otherwise, the DA did not fructify into any positive outcome. In my view therefore, non-disclosure of execution of DA was not fatal for the Plaintiffs.

17. Reliance by Mr. Deshmukh on judgment of this Court in ***Tarakchand Hasaram Shamdasani*** (supra) is inapposite. In that case, this Court has highlighted duty on Plaintiffs to disclose ownership of all other properties, which are capable of being used for which the *bonafide* requirement is expressed. In the present case, the Plaintiff did not own any other property and therefore there are no question of making their disclosure. The judgment therefore has no application to the facts of the present case.

18. Coming to the aspect of *bonafide* requirement, it is seen that the Plaintiffs pleaded the *bonafide* need in respect of the suit premises *inter alia* for the purpose of separate residence of son of Plaintiff No.1. According to Plaintiffs, after performing marriage of son of Plaintiff No.1 the ground floor premises in possession of Plaintiffs would have been insufficient for his separate residence. The Appellate Court has considered the need of growing family as a fit ground for establishing *bonafide* requirement of the Plaintiffs. The Appellate Court has taken into consideration well settled position of law that landlord is the best judge of his own requirement and that tenant cannot dictate terms on him. I am unable to notice any element of perversity in the findings recorded by the Appellate Court relating to the ground of *bonafide* requirement.

19. What is more shocking in the present case is that the total absence of need of Petitioners in respect of the suit premises. The original tenant Pratibha passed away on 26 March 2017. Three Petitioners are her legal heirs. Petitioner No.1(a) Dr. Vijay Achyut Ketkar is resident of a bungalow at Tulshibagwale Colony, Sahakarnagar No.2, Pune. Plaintiff No.1(b) Dr. Mohan Achyut Ketkar is permanent resident of USA. Plaintiff No.1(c) is married daughter who had settled alongwith her husband in her husband's house. Her residence in different house is borne out by service of summons of appeal, at the address of, Dr. Shashank Suresh Behare 157, Lifeline Hospital, Legacy, D.P. Road, Aundh, Pune. She was well settled in her matrimonial home till her divorce by mutual consent on 15 June 2012. It appears that a flat at Karve Road, Pune has been given perpetually to Petitioner No.1(c) as

one of the conditions for divorce. Thus, none of the Petitioners are in any need of the suit premises. They are fighting the litigation out of hope of securing a flat on ownership basis when the structure is redeveloped.

20. Considering the above position, I am not inclined to exercise extraordinary jurisdiction under Article 227 of the Constitution of India for interfering in the decree passed by the Appellate Court. It is well settled position that jurisdiction of High Court under Article 227 of Constitution of India is supervisory and this Court does not act as Court of first Appeal to reappreciate the evidence. So long as this Court is satisfied with ultimate outcome of the case, it is not necessary to correct every error of law. Reference in this regard can be made to judgment of the Apex Court in ***Garment Craft vs. Prakash Chand Goel,***[3] in which it is held in paragraph 15 as under:

> 15. Having heard the counsel for the parties, we are clearly of the view that the impugned order 1 is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

3 2022 (4) SCC 181

21. Considering the position that Petitioners are not at all in the need of suit premises. This Court is not inclined to exercise extraordinary jurisdiction under Article 227 of Constitution of India. No interference is warranted in the impugned order. Writ Petition is accordingly dismissed. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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