

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INTERIM APPLICATION NO. 5324 OF 2025****IN****INTERIM APPLICATION NO. 3779 OF 2023****IN****EXECUTION APPLICATION (L) NO. 4518 OF 2021****B R BUILDERS AND DEVELOPER****..... APPLICANT****IN THE MATTER BETWEEN****ASHOK PHOORTARMAL JAIN & ANR.****..... APPLICANTS****VERSUS****CHANDRASHEKHAR GANPAT RANE****..... RESPONDENT**

Adv. Vidya Nair i/b. Adv. Alisha Pinto for the Decree Holder/Org.Applicants.

Adv.Pramod G. Kathane a/w. Adv. Amol Ghurde, Adv. Krishna Dhere for the Applicants in I.A.

CORAM : RAJESH S. PATIL, J.**DATE : 14 JANUARY, 2026****P.C. :-**

1) This interim application is filed by the third party seeking to recall the orders dated 12 March 2024 and 17 April 2024 passed in the Interim Application No. 3779 of 2023.

2) The order dated dated 12 March 2024 reads as under :-

1. This Interim Application seeks execution of the consent order dated 27th October 2016 pursuant to which the Judgment Debtor has given an undertaking to the Applicants that he would provide

two flats each of 550 sq.foot carpet area as well as another flat admeasuring 450 sq.foot carpet area jointly in the name of the Applicants in 'C' Wing of the building known as Siddharth Apartment in Vakola, Santacruz (East), to the Applicants within thirty days from the date of execution of the consent terms.

2. Ms.Nair, learned Counsel, appears for the Applicants and submits that the Judgment Debtor also undertook to execute and enter into three registered agreements under the Maharashtra Ownership of Flats Act, 1963, in respect of the three flats, however, the same has not yet been done till date and therefore this Application for execution.

3. Ms.Nair submits that by order dated 13th December 2023 this Court (Coram : Bharati Dangre, J.) had issued notice to the Respondents making the same returnable on 19th January 2024. Hamdast was granted. Private service of notice was also permitted including electronic mail service. Learned Counsel would submit that private service has been effected on the Respondents on 26th December 2023. However, the Hamdast has been returned as not served. Referring to the service reports filed by the bailiff on 18th January 2024 and 2nd February 2024, Ms.Nair for the Applicants would submit that although earlier on 18th January 2024 the report of service was awaited as intimation had been served and the item was on hold as the door was locked, however, on 2nd February 2024, the notice was returned with the remark "door locked". Learned Counsel also refers to the transcripts of the whatsapp messages exchanged between the wife of the Judgment Debtor and the Advocate for the Applicants on page 18 of the affidavit of service dated 19th January 2024 and submits that despite being aware and despite having received the notice through private service, there is a deliberate attempt to avoid / evade service through the bailiff and therefore this Court ignore the bailiff's report to that extent and consider the service to the Respondent as complete.

4. I have perused the bailiff's report as well as the material placed before me including page 18 as well as the affidavit of service with respect to the private service and I am of the view that the service to the Respondent be treated as complete.

5. Ms.Nair would submit that in view of above, this Court grant relief in terms of Prayer clauses (a) and (c).

6. Having heard the learned Counsel and having perused the Application, this Court is of the view that the Judgment Debtor be directed to execute an Agreements for Sale in favour of the Applicants in respect of the three flats viz. Flat No.101 admeasuring

420.33 sq.ft carpet area, Flat No.102 admeasuring 535.72 sq.ft. carpet area and Flat No.501 admeasuring 420.33 sq.ft. carpet area in Wing C of the building known as Siddharth Apartment situated on a plot of land bearing CTS No.2834 to 2851, 2853, 2853/1 to 4, 2855 to 2857 and 3387 to 3391 and 3397 and being at Siddharth Nagar, Village : Kole Kalyan, Vakola, Santacruz (East), Mumbai – 55, within a period of four weeks from the date of uploading of this order.

7. List on 17th April 2024.

8. In the meanwhile, subject to the above extent, till the next date, the Judgment Debtor is restrained either by himself or through his employees, agents or servants, from in any manner, whatsoever, dealing with or disposing of any of his assets or properties.

3) The order dated 17 April 2024 reads as under :-

1. Pursuant to the order dated 12th March, 2024, today when the matter is called out, Ms. Nair, learned Counsel appears for the Applicants and submits that although this Court had directed the Judgment Debtor to execute Agreements for Sale in favour of the Applicants in respect of three Flats viz. Flats No. 101, 102 and 501, within a period of four weeks, no agreement has been executed till date.

2. Ms. Mamnani, learned Counsel appears for the Judgment Debtor and submits that the Judgment Debtor is not in a medical or physical condition to execute any agreement and this Court grant some time to file reply in the matter.

3. Ms. Nair, learned Counsel for the Applicants submits that in the past the Respondent has been absconding and this is the first time that an appearance has been made in this Court and that if the Respondent is not in a position to execute the agreements, this Court grant alternative prayer Clause D, which reads thus:-

“D. In the alternative to prayer clause (C), that this Hon’ble Court be pleased to direct the Prothonotary & Senior Master or any other officer of this Hon’ble Court under Order XXI Rule 34 of the Code of Civil Procedure, 1908 to execute an Agreement for Sale for three flats viz. Flat No. 101 admeasuring 420.33 sq. ft. carpet area, Flat No. 102, admeasuring 532.72 sq. ft. carpet area and Flat No. 501 admeasuring 420.33 sq. ft. carpet area in Wing C of the building known as Siddharth Apartment situated on

a plot of land bearing CTS No. 2834 to 2851, 2853, 2853/1 to 4, 2855 to 2857 and 3387 to 3391 and 3397 and being at Siddharth Nagar, Village : Kole Kalyan, Vakola, Santacruz (E), Mumbai- 55 annexed at “ Exhibit-H” of the present Interim Application and to admit execution before the Registering Authority;”

4. Having heard the learned Counsel and having considered the fact situation, this Court is of the view that in the circumstances of the case, relief in terms of prayer Clause D as above be granted.

5. Learned Prothonotary and Senior Master of this Court is requested to execute Agreements for Sale in respect of Flats no. 101, 102 and 501 in ‘C’ wing of Siddharth Apartment situated on plots of land bearing CTS No. 2834 to 2851, 2853, 2853/1 to 4, 2855 to 2857 and 3387 to 3391 and 3397 at Siddharth Nagar, Village: Kole Kalyan, Vakola, Santacruz (E), Mumbai-55 in terms of the aforesaid prayer, within a period of four weeks.

6. List for compliance on 13th June, 2024.

7. Restraint order granted earlier to continue till the next date.

4) It is the case of the applicant that he is not a party to the arbitration proceedings and is also not a party to the execution application which is filed by the decree holder arising out of the arbitration proceedings.

5) The parties to the arbitration proceedings are the partners of a firm called as Ashirward Properties. Under the Arbitration Act, 2016, Section 11 application was filed by the decree holder before this Court. In Section 11 application the partner of the firm one Mr. Rane after much difficulty appeared and by consent, order was passed. By the said order, consent terms between the parties was taken on record on 27 October, 2016. Pursuant to the said consent terms, three flats

were to be handed over to the decree holder. In turn, the decree holder was suppose to withdraw the suit filed before the City Civil Court at Dindoshi, Mumbai for specific performance. Since the judgment debtor did not comply with the directions which were mentioned in the consent terms, the decree holder filed Execution Application (L) No. 4518 of 2021. Even as of now the possession of the said three flats has not been given to the decree holder.

6) In the execution application, the decree holder has filed Interim Application No. 3779 of 2023. In the said interim application, an order was passed on 12 March, 2024 and subsequently on 17 April, 2024 Order was passed, which has been recorded in the earlier paragraph. So also, on 19 June, 2024, further order was passed in the interim application. Pursuant to these three orders, the judgment debtor was directed to execute agreement for sale in favour of the decree holder in respect of Flat Nos. 101, 102 and 501 in the building Siddharth Apartment, 'C' Wing, Siddharth Nagar, Vakola, Santacruz (E), Mumbai and since the judgment debtor did not comply with the directions given by this Court of the execution of the agreement for sale, the Prothonotary and Senior Master (Officer of this Court) was directed to execute the agreement for sale in respect of the said three flats as per the order dated 17 April, 2024.

7) The Prothonotary and Senior Master, High Court, Bombay, thereafter complied with the directions given by this Court and agreement for sale in respect of the said three flats were executed in favour of the decree holder. However, till date the possession of the said three flats are not given to the decree holder.

8) It is the case of the present applicant who is a developer and builder that as per his agreement with Mr.Rane, he had paid a sum of Rs.2,50,00,000/- to Mr.Rane and was also supposed to give the super built up area of 6500 sq.ft. It is submitted that though the amount was paid to Mr.Rane. However, the super built up area of 6500 sq.ft. has not been handed over to Mr.Rane. Therefore, since this Court has passed an order directing the judgment debtor (Mr.Rane) initially to execute the agreement in favour of the decree holder and on his failure subsequently the Prothonotary and Senior Master to execute the documents.

9) The applicant is seeking recalling the said order.

10) According to me, such an order cannot be passed as of now, because the orders dated 12 March 2024 and 17 April 2024 have already been executed as the agreement of sale has been entered into by the Prothonotary and Senior Master in favour of the decree holder.

11) So also, the fact remains that it is not Mr.Rane or his legal

heirs who has come before this Court to challenge the order passed by this Court. The said Mr.Rane was a party respondent in the Section 11 arbitration proceedings. The present applicant was not a party to the arbitration proceedings. Therefore he is a third party as pointed out to me by the advocate appearing for the decree holder, the developer/builder who is a third party. The applicant has not disclosed before this Court that whether he has handed over 6500 sq.ft. area to Mr.Rane. At the most the area of 3 flats will be roughly around 1550 sq.ft. out of the total area of 6500 which according to the applicant was supposed to given to Mr.Rane. The only answer to this from the developer is that he has settled with several persons. Therefore, the area which was supposed to be given to this Mr.Rane has been given to different persons on behalf of Mr.Rane.

12) It is difficult for me to believe this case of the applicant-developer.

13) The applicant who is a third party is seeking to set aside an order passed by the Single Judge of this Court on 12 March 2024, 17 April 2024 and 19 June 2024 (Coram : Abhay Ahuja, J.) which in my view cannot be set aside by me. Therefore, this application is not maintainable, so also on the ground that the applicant herein is a third party in the present proceedings, the application requires to be

rejected.

14) In view of the same, the **interim application filed by the applicant stands rejected.**

15) The decree holder to take steps to execute the decree alongwith police help and is granted liberty to prefer such other proceedings under Order 21 and Section 51 of the Code of Civil Procedure, 1908.

(RAJESH S. PATIL, J.)