

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9828 OF 2017

Chandrakant Govind Shinde ... Petitioner
Vs.
Niranjan Vitthal das Naik ... Respondent

Mr. Parag V. Dube for Petitioner.
Mr. Amey Deshpande for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 30, 2019

P.C. :

Heard Mr. Dube, learned Counsel for the petitioner and Mr. Deshpande, learned Counsel for the respondent at length.

2. This Petition takes exception to the order dated 01.08.2017 passed by the learned District Judge-11, Pune in Civil Revision Application No.9 of 2017. By that order, the learned District Judge dismissed the Revision Application preferred by the petitioner challenging the order dated 09.01.2017 passed by the learned trial Judge below exhibit-1 in Drakhast No.118 of 2013. By order dated 09.01.2017, the learned trial Judge vacated the stay and ordered issue of possession warrant.

3. Rule. Mr. Deshpande waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. The respondent instituted Suit being R.C.S.No.211 of 2009 for eviction of the petitioner. On 15.03.2010, parties entered into compromise terms. By order dated 31.03.2011, the Suit was disposed of by passing following order:

“R.C.S.No.211 of 2009 is hereby disposed of as per terms

and conditions of compromise pursis at exh.11. The plaintiff to get said compromise register under sec.17 of Registration Act within two months from today and intimate the court.”

5. It appears that respondent deposited Rs.30,000/- on 27.03.2010 and Rs.50,000/- on 01.07.2010. The respondent was supposed to deposit Rs.1,00,000/- on or before 31.03.2011. The respondent filed Miscellaneous Application dated 06.08.2013 in the Suit for extension of time to register the compromise terms. By order dated 14.08.2013, the learned trial Judge extended time for a period of 2 months. As the respondent did not deposit Rs.20,000/-, he filed application exhibit-5 on 31.10.2013 before the executing Court for permission to deposit Rs.20,000/- as per the compromise terms. By order dated 05.12.2013, the learned Executing Court directed Nazir to accept Rs.20,000/-. Accordingly, on 18.12.2013, respondent deposited Rs.20,000/- in the trial Court.

6. The grievance of the petitioner is that the order dated 14.08.2013 as also the order dated 31.10.2013 were passed by the trial Court and the executing Court respectively without issuing notice to the petitioner as also without hearing the petitioner. Mr. Dube submitted that the said orders are nullity and the challenge to the said orders can be raised even in collateral proceedings. He relied upon the decision in ***Shivshankar Gurgar Vs. Dilip, (2014) 2 SCC 465.***

7. Mr. Dube submitted that in pursuance of order dated 04.09.2017, petitioner has deposited Rs.2,00,000/- in the trial Court and Rs.18,300/- in this Court. He submitted that in case the Court is inclined to set aside the orders dated 14.08.2013 and 05.12.2013, the petitioner will file replies in both the applications on or before 03.06.2019 and serve copies on the other side during this period. He further submitted that petitioner has no objection if the respondent withdraws Rs.2,00,000/- deposited in

the trial Court and Rs.18,300/- in this Court.

8. Mr. Deshpande submits that respondent is present in the Court. Upon taking instructions from him, he submits that the orders dated 14.08.2013 and 05.12.2013 may be set aside and the applications may be restored to the file of trial Court and the executing Court respectively. He submits that both the Courts may be directed to dispose of these applications in a time bound manner and the respondent may be permitted to withdraw Rs.2,00,000/- and Rs.18,300/- deposited by the petitioner in the trial Court and this Court, respectively.

9. In view thereof, by consent of the parties, following order is passed:

- a. The order dated 14.08.2013 passed by the trial Court in Miscellaneous Application No.____ of 2013 dated 06.08.2013 is set aside. The said application is restored to the file of the trial Court. The petitioner shall file reply and serve copy on the other side on or before 03.06.2019;
- b. The order dated 05.12.2013 passed below exhibit-5 in Regular Darkhast No.118 of 2013 is set aside and the application exhibit-5 is restored to the file of the executing Court. The petitioner shall file reply to this application and serve copy on the other side on or before 03.06.2019;
- c. The parties agree that they will appear before the trial Court and the executing Court on 07.06.2019, and for that purpose, no fresh notice be issued to them. The learned trial Judge is requested to fix a suitable date and dispose of the applications within 4 weeks from fixing suitable date;
- d. All contentions of the parties on merits are expressly kept open;

e. The respondent is permitted to withdraw Rs.2,00,000/- deposited in the trial Court and Rs.18,300/- deposited in this Court, unconditionally.

10. The bank details of the respondent are as under:

Name : Niranjan V. Naik
Bank & Branch : Indian Bank, Nanapeth Branch, Pune
A/c. No. : 494996039
Type of A/c. : Savings
IFSC Code : IDIB000N012
MICR Number : 411019006

11. The respondent shall make application before the Deputy Registrar (Civil) of this Court giving aforesaid details. The Deputy Registrar (Civil) shall disburse the amount in the aforesaid bank account of the respondent within one week from receipt of the application giving requisite details.

12. Till such time the applications are decided, the warrant issued by the executing Court is kept in abeyance.

13. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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