

KUSUM HARILAL SONI

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v.

CHANDRIKA NANDLAL MEHTA AND ANR.

(Civil Appeal No. 3785 of 2016)

APRIL 12, 2016

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[V. GOPALA GOWDA AND ARUN MISHRA, JJ.]

Code of Civil Procedure, 1908 – Or.21, rr. 41 and 42 – Execution of Decree – Eviction proceedings u/s. 13A(2) of Bombay Rent Act, 1947 – Decree in favour of landlord – Directing eviction of premises and compensation to Landlord – Tenant gave possession of tenanted premises, but amount of compensation not paid – Application u/Or. XXI rr. 41 and 42 by Landlord/decreed-holder for warrant of recovery of compensation and for attachment of property of the judgment-debtor alongwith injunction on judgment-debtor from selling the property – Application allowed – Notice u/Or. XXI r. 22 filed – High Court made the notice absolute – Thereafter warrant of attachment of property was issued by High Court – Thereafter daughter of judgment-debtor filed Chamber Summon for setting aside the attachment on the ground that the judgment-debtor had sold the property to her by MOU dated 11.06.1995 and an unregistered agreement dated 26.06.2001 – High Court set aside the attachment – On appeal, held: The facts of the case indicate that MOU and the agreement were set up by the judgment-debtor in order to delay and frustrate the execution proceedings – Mother and daughter had illegally attempted to get the attachment cancelled by setting up false documents – Property in question was rightly attached in execution proceedings.

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Allowing the appeal, the Court

HELD: The order for eviction and compensation was passed way back on 6.12.2000 by the competent authority, which has attained finality up to this Court. Respondent No. 1 had stated that in the year 2000 the flat in question was in the name of herself and her daughter in joint names. She has not stated that any such MOU had been entered into between mother and daughter. The nature of MOU indicates that even after marriage of daughter, when she ceases to be in possession of flat in question,

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A the mother, judgment-debtor will remain in possession. MOU casts a duty upon respondent No. 2 to look after and maintain the vendor and her family even after her marriage and ceases to stay in the flat in question with the vendor. Such an understanding by the married daughter by itself falsifies the documents and indicates that a dubious transaction had been entered into between
 B respondent Nos. 1 and 2 to illegally defeat the order of payment of compensation. Thus it is clear that daughter has been set upon false pretext to obstruct execution of order dated 6.12.2000. The statement of the judgment-debtor also falsifies MOU and the subsequent unregistered documents cannot be said to be *bona fide*.
 C *fide*. The facts indicate that the MOU and the agreement had been set up by respondent No. 1 in order to delay and frustrate the eviction order and payment of compensation. It was clearly collusive and in order to defeat the execution proceedings. The mother and daughter had illegally attempted to get the attachment cancelled by setting up false documents in favour of respondent
 D No. 2 on the basis of MOU and the unregistered agreement which had not seen the light of the day for several years. [Para 10] [393-F; 394-E-H; 395-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3785 of 2016.

E From the Judgment and Order dated 14.06.2013 of the High Court of Judicature at Bombay in Chamber Summons No. 1249 of 2009 in Execution Application No. 318 of 2005 in Application Case No. 13 of 1996]

F Sushil Karanjkar, K. N. Rai, Advs., for the Appellant.

P. N. Gupta, Ms. Bharti Gupta, Advs., for the Respondents.

The Judgment of the Court was delivered by

ARUN MISHRA, J. 1. Leave granted.

G 2. The appellant has questioned the order passed by the High Court of Judicature at Bombay in relation to Chamber Summons No. 1249 of 2009 arising out of Execution Application No. 318 of 2005 thereby setting aside the attachment of Flat No. 408, Saidham Co-operative Society Sodawala Lane, Borivli (West), Mumbai.

H 3. The appellant had filed a suit for eviction with respect to Flat

No. F-201, Building No.4, Prem Nagar, Mandpesbwar Road, Borivali (West), Mumbai against respondent no. 1 as license had expired on 1.11.1994. Thereafter the premises were not vacated, nor the compensation was paid. The competent authority passed an order directing the respondent no. 1 to handover vacant possession to the appellant along with compensation of Rs.8,000/- per month with effect from 1.11.1994 till the date of handing over the possession. Against the order of the competent authority, Respondent no. 1 filed CRA no. 678 of 2001 before the High Court which was dismissed. Thereafter respondent no. 2 filed a Special Leave Petition no. 7022 of 2001 before this Court and obtained an ex-parte stay only on the ground for extension of time to vacate. Later, upon the statement made that possession of the flat was handed over, the SLP was dismissed by this Court as withdrawn. Though the possession was handed over on 17.7.2001 to the Appellant, the amount of compensation was not paid. Thereafter, an application under Order 21 Rules 41 and 42 of the Code of Civil Procedure was filed by the Appellant restraining respondent no. 1 from transferring the flat No. 408, Saidham Co-operative Society Sodawala Lane, Borivli (West), Mumbai to respondent no. 2. However, in order to defeat and frustrate the decree with respect to the compensation, respondent no. 1 transferred the flat in question to respondent no.2 by an unregistered agreement deed dated 26.6.2001 which is neither properly stamped nor duly registered. It was submitted that the Memorandum of Understanding dated 11.6.1995 and agreement dated 26.6.2001 are sham and had been set up after passing of the order for possession and compensation by the respondents to defeat the execution of the order.

4. The appellant had submitted that on 1.10.1987 respondent no. 1, Smt. Chandrika Nandlal Mehta came to be the owner of the flat and entry of ownership was transferred in her favour on 23.2.1995. As the licence agreement had expired with respect to the vacation of flat No. F-201, Building No.4, Prem Nagar, Mandpesbwar Road, Borivali (West), Mumbai, eviction proceedings had been initiated under section 13A(2) of the Bombay Rent Act, 1947, in which respondent no. 1 made a statement that there was another flat being Flat No. 408 Saidham Co-operative Society Sodawala Lane, Borivli (West), Mumbai which was purchased in the name of herself and her daughter Chetana. The competent authority had passed the eviction order on 6.12.2000. The appeal had been rejected by the High Court against the order of the competent authority for eviction and compensation on 10.4.2001. On

A 8.5.2001, in the SLP preferred by respondent no. 1, an interim ex-parte stay order was granted by this Court. Thereafter on 26.6.2001, in order to defeat the order of eviction and payment of compensation, respondent no. 1 had entered into so-called agreement which is an unregistered document in favour of her daughter in the shape of transfer deed. However, possession of the licensed premises was handed over on 17.7.2001 to the appellant, the amount of compensation from 1984 till 2001 at the rate of Rs.8,000/- per month was not paid.

B 5. On 20.12.2001, the appellant filed an application before the competent authority for recovery of possession and injunction upon respondent no. 1 from selling the flat in question. Thereafter the SLP was dismissed on 18.3.2002 as having been withdrawn by respondent no. 1.

C 6. On 10.4.2002, the appellant filed a miscellaneous application under Order 21 Rule 42 CPC for recovery of amount of compensation of Rs.6,48,000/- along with interest and for attachment of the flat in question. On 12.4.2002 the application filed by the appellant was allowed. Respondent no. 1 was restrained from transferring the suit property. On 5.6.2002 the application filed by the appellant under Order 21 Rule 42 was allowed and respondent no. 1 was directed to pay arrears of monthly license fee @ Rs.8,000/- per month. However, Notice no. 900/06 was filed by the appellant under Order 21 Rule 22 CPC before the High Court for proceeding with the execution. On 22.3.2007 the High Court passed an order making the notice absolute. Thereafter on 2.2.2009 warrant of attachment of movable property was issued by the High Court in the execution.

D 7. Later on, Respondent no. 2, daughter of respondent no. 1, filed Chamber Summon No. 1249/09 for setting aside the attachment of the suit flat and moveables therein by contending that by Memo of Understanding (for short the MOU) dated 11.6.1995 and an unregistered agreement dated 26.6.2001 respondent no. 1 had sold the flat in question to respondent no. 2 for a sum of Rs.4,25,000/-.

E 8. A reply was filed by the appellant on 12.3.2011 and the chamber summons was opposed on the ground that a fraud being played on the Court. It was contended in the reply that the chamber summons was based on fraudulent and mala fide intention and the mother and daughter had acted in collusion. The High Court had already made the notice absolute on 22.3.2007 without any objection filed by Judgment debtor.

9. The High Court by the impugned order has allowed the objection of respondent no. 2. Liberty has been given to the appellant to initiate proper proceedings in accordance with law to get the declaration and proving the averments so made in collusion with respect to MOU dated 11.6.1995 and agreement dated 26.6.2001 afresh. The documents filed by respondent no. 2 have been relied upon. The attachment has been set aside. Hence, the present appeal.

10. We have heard the learned counsel for the parties at length. The flat in question was transferred in the name of respondent no. 1 on 1.10.1987. Thereafter, the different premises Flat No. F-201, Building No.4, Prem Nagar, Māndpesbwar Road, Borivali (West), Mumbai occupied by the respondent no. 1 as licensee was ordered to be vacated by the competent authority on 6.12.2000. Though the possession had been handed over on 17.7.2001 after rejection of the appeal by the High Court and filing of the SLP in this Court, it is clear that in order to defeat the execution order for payment of compensation, an unregistered agreement has been entered into on 26.6.2001 between mother and the daughter on the basis of so-called MOU dated 11.6.1995, which indicates that respondent no. 2 was unmarried at the relevant time. It was mentioned in Clause 3 of the MOU that the purchaser i.e. respondent no. 2 had agreed to look after and maintain the vendor and her family even after her marriage and she ceased to stay in the flat with the vendor. A sum of Rs.1,14,000/- is purported to have to been received from unmarried daughter by respondent no. 1. This MOU had not been set up by respondent no. 1 while she made the statement before the competent authority in the pending eviction proceedings in 2000. Respondent no. 1 had stated that in the year 2000 the flat in question was in the name of herself and her daughter in joint names. She has not stated that any such MOU had been entered into between mother and daughter and once the order for eviction and compensation had attained finality, it is apparent that in order to frustrate the order for payment of compensation, the deed dated 26.6.2001 had been set up which is not a registered document. Though it was mentioned in the document that the stamp and registration charges shall be paid by the transferee, it was not the document executed by the Co-operative Society. This Court had issued a notice in the SLP on 8.5.2001 only on the question of grant of reasonable time for vacating the premises. It is also to be noted that the miscellaneous application was filed under Order 21 Rule 42 CPC by the

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- A appellant against respondent no. 1 restraining her from selling/transferring/
disposing of the flat in question, so that the order dated 6.12.2000 with
respect to compensation passed by the competent authority may be
executed. On 17.7.2001 the possession had been handed over to the
appellant. Miscellaneous application dated 10.4.2001 was filed by the
B decree holder under Order 21 Rule 42 CPC for issuance of warrant for
recovery of the compensation and arrears of license fee in the sum of
Rs.6,48,000/- along with interest @ 9% per annum and for attachment
of flat in question along with injunction upon respondent no. 1 from selling
the flat. This notice attained finality as respondent no. 1 failed to submit
any reply to the notice. The notice was made absolute by the High
C Court vide order dated 22.3.2007. The warrant of attachment was issued
on 2.2.2009 and the flat in question has been attached. The judgment
debtor has failed to indicate that the MOU dated 11.6.1995 and the
unregistered agreement dated 26.6.2001 at the time when notice was
issued and made absolute and execution was ordered to be prosecuted
D with. It was only after the notice was made absolute and the flat in
question had been attached, respondent no. 2 has taken the chamber
summons in question on the basis of which the impugned release order
was passed by the High Court. The facts indicate that the MOU and
the agreement had been set up by respondent no. 1 in order to delay and
frustrate the eviction order and payment of compensation. The order
E was passed way back on 6.12.2000 by the competent authority, which
has attained finality up to this Court. The nature of MOU indicates that
even after marriage of daughter, when she ceases to be in possession of
flat in question, the mother, judgment-debtor will remain in possession.
MOU casts a duty upon respondent no. 2 to look after and maintain the
F vendor and her family even after her marriage and ceases to stay in the
flat in question with the vendor. Such an understanding by the married
daughter by itself falsifies the documents and indicates that a dubious
transaction had been entered into between respondent nos. 1 and 2 to
illegally defeat the order of payment of compensation. Thus it is clear
that daughter has been set upon false pretext to obstruct execution of
G order dated 6.12.2000. As per MOU, the Judgment-debtor herself
continues to be in possession. The statement of the judgment-debtor
also falsifies MOU and the subsequent unregistered documents cannot
be said to be bona fide. It was clearly collusive and in order to defeat
the execution proceedings. The mother and daughter had illegally
attempted to get the attachment cancelled by setting up false documents
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in favour of respondent no. 2 on the basis of MOU and the unregistered agreement which had not seen the light of the day for several years. A

11. Thus, the High Court has erred in law in setting aside the attachment. The impugned order and the chamber summons are liable to be set aside. The appellant is free to carry out the execution and to realize the amount of compensation from the flat in question as it has rightly been attached in the execution proceedings. The impugned order is accordingly set aside and the appeal is allowed. B

Kalpana K. Tripathy

Appeal allowed.