

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6214 OF 2024

Ajitsinh Gopaldas Thakkar

.. Petitioner

Versus

Roji Silvestor Bar nee Mis Piuret John Fonseca
and Ors.

.. Respondents

.....

- Mr. Rajesh Kachare a/w. Ms. Sonal Dabholkar, Advocates for Petitioner.

.....

CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 03, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Kachare, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 03.09.2024 and the Writ Petition.
- 4.** By virtue of the impugned order dated 18.01.2024 passed below Exhibit-27 in Regular Civil Appeal No.231 of 2016, Application filed by original Plaintiff seeking deletion of one of the property in respect of which Plaintiff had entered into an understanding with original Defendant Nos.25 to 27 came to be allowed. The circumstances in which the said Application has been allowed is such that according to Plaintiff, the understanding between Defendant

Nos.25 to 27 was to the effect of Plaintiff receiving the amount of Rs.3,45,00,000/- in lieu of deleting the property from the proceedings..

5. Mr. Kachare in his usual fairness points out the Application filed by Plaintiff previously and Application below Exhibit-27 for recall of the rejection order wherein it has been averred by Plaintiff that dispute between Plaintiff and Defendant Nos.25 to 27 'has been settled' (**emphasis supplied**). He would submit that the words 'has been settled' is infact incorrectly construed in view of the fact that there was a clear understanding between Plaintiff and the Defendant Nos.25 to 27 that the Defendant Nos.25 to 27 shall pay an amount of Rs..3,45,00,000/- to the Plaintiff for an effective settlement for seeking deletion of the particular property. He would submit that the Defendants have paid only an amount of Rs.25,00,000/- which is enumerated in a chart in paragraph No.7 of the Writ Petition. It is seen that amount of Rs.25,00,000/- has been paid by RTGS in the bank account of Plaintiff by the said Defendants.

6. Mr. Kachare would submit that the understanding between parties was that Plaintiff would receive amount of Rs.3,45,00,000/-. He would submit that despite the said having been mentioned in the Application filed for deletion as also has been allowed and particular property has been deleted by learned District Court in pending Regular Civil Appeal thereby affecting the substantive rights of

the Plaintiff.

7. Mr. Kachare would clarify that Application filed below Exhibit-27 was filed seeking recall of the previous order dated 17.08.2022 whereby application for deleting the particular property stood allowed.

8. I have perused the orders which are appended to the Writ Petition and an arguable case has been made out by Mr. Kachare for issuance of notice to Respondents and stay of the proceedings before the learned Appellate Court.

9. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondents a copy of this order and copy of the Writ Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition on or before the next date, if so desired. Respondents are directed to remain present either themselves, through Advocates or through Video Conferencing on the next adjournment date.

10. In the meanwhile, proceedings before District Court in Regular Civil Appeal shall stand stayed until the present Writ Petition is determined.

11. Stand over to 18th September, 2024.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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