



Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (L) NO. 25342 OF 2022
IN
WRIT PETITION NO. 3730 OF 2021

Shweta Shetty ...Petitioner
Versus
 State of Maharashtra through its Chief Secretary ...Respondents
 & Ors

Mr Jayom Shah, with Janani S, i/b Manoj Agawal, for the Petitioner.
Mr Kedar B Dighe, AGP, for Respondent-State.
Mr Aditya Mehta, for Respondent No.2.

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 18th April 2023

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 SANKPAL

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1. Admit. In view of the facts and circumstances noted below, the Review Petition must be made returnable forthwith.

2. A review is sought, and in our view correctly, of our order of 25th November 2021. That was a detailed judgment by which we held against the Petitioner, Shweta, the daughter of the 2nd Respondent, her widowed father. The representation to us at that time was that the 2nd Respondent was the *sole and absolute owner* of

the residential flat in question, Flat No. 2A, Giriraj Cooperative Housing Society Ltd, 11 Altamont Road, Mumbai 400 026.

3. Shweta's Writ Petition challenged an order of 27th November 2020 passed by the Tribunal under the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The resultant judgment notes that we not only allowed the father to appear online and to address us directly, and we considered the law, but throughout proceeded on the footing that the flat in question did belong to the father and was his sole and absolute property. This was indeed the basis of a complaint in 2020 to the tribunal.

4. What was not disclosed to us was that the factual position had changed (and changed drastically) by the time of our judgment.

5. Paragraph 3 of our judgment of 25th November 2021 at page 67 reads thus:

“3. Before us, there is no controversy about two aspects of the matter. There is no doubt that Mr Shetty is the sole and absolute owner of this flat. There is also no doubt that Shweta has no right of any kind in that flat. Mr Thorat for Shweta fairly accepts and concedes this position. He accepts that Shweta has not canvassed any independent right to the flat at all.”

(Emphasis added)

6. This is to be contrasted to what was now brought on record, viz., that on 5th August 2021, after the impugned order was passed, and after the Writ Petition was filed, the 2nd Respondent made a

gift of the entire flat, i.e., a transfer *in praesenti*, to his other daughters. Therefore, at the date of our order of 25th November 2021, the 2nd Respondent was not the sole owner or the absolute owner of the flat at all. In fact, he had no remaining right, title or interest in the flat, and had divested himself of all title by virtue of the 5th August 2021 Gift Deed.

7. This would have materially affected the outcome, for, in the resultant judgment we directed and ordered the Writ Petitioner, Shweta to leave the flat entirely. She has done so.

8. We do not know why this Gift Deed was not brought to our notice at any point in time. It is manifestly clear that our order of 25th November 2021 was obtained on a representation to the Court that was false and incorrect to the knowledge of the father and possibly the other donee daughters who are also arrayed as parties.

9. In this context, we must refer to our order of 18th November 2021 when we recorded a statement made on behalf of Shweta that she would temporarily and without prejudice to her rights and contentions voluntarily stay away from the disputed flat until the given time on 25th November 2021. It was on that basis that we then proceeded to make the order under review.

10. It is noteworthy that even on 18th November 2021, no mention was made of the Gift Deed to us. Had that been done, there is no doubt that Shweta would not have made the statement, nor would we have even asked for it.

11. Neither of us has the slightest doubt that an order has been taken from this Court, and that too an order of eviction of the Writ Petitioner, on a basis demonstrably incorrect and false to the knowledge of the contesting Respondent. There is in our view a fraud on the Court. We cannot allow our order of 25th November 2021 or even for that matter the 18th November 2021 order to stand for a single minute. In *Meghmala & Ors v G Narasimha Reddy & Ors*,¹ the Supreme Court inter alia held where a person gets an order by misrepresentation or playing a fraud, such an order cannot be sustained. Fraud avoids all judicial acts, ecclesiastical or temporal.² It is often said that fraud vitiates everything. While this is necessarily true in ordinary or commonplace transactional matters, a fraud on a *Court* is worse by several degrees of magnitude. It has a much wider effect and impact. It not only seriously prejudices the rights of parties, but it undermines the authority of a Court. That an act of a Court should not prejudice a party is equally well settled, and this is particularly so if an order of Court has been obtained by fraud, misleading, deception and deliberate suppression. All these clearly exist in the present case.

12. It may be true that at the time of the order impugned in the Writ Petition, which is of 27th November 2020, the flat had not yet been gifted. But the subsequent event, viz., the Gift Deed of 5th August 2021, is a material factor. In effect, the 2nd Respondent and his donee daughters obtained an order of eviction of the Writ Petitioner, and that too a summary order of eviction, on the basis that the flat continued to belong to the 2nd Respondent father — a

1 (2010) 8 SCC 383.

2 *SP Chengalvaraya Naidu v Jagannath*, (1994) 1 SCC 1.

fact that was entirely untrue by the time of our final order and judgment dated 25th November 2021. Proceedings under the MWPSA Act are not meant to be used to grab property illicitly. What has been done is a fraud on the Court and a fraud on the statute.

13. We note that there is no Interim Application for restoration of possession, but that will not detain us. The status quo ante will have to be restored, i.e., as it stood on the date of filing of the Writ Petition.

14. There is no question of allowing anyone to file an Affidavit in Reply in a situation like this. The execution of the Gift Deed is admitted. Its non-disclosure is also admitted. That is the end of the matter so far as we are concerned.

15. Consequently, the Review Petition is made absolute. The 25th November 2021 judgment is recalled and set aside. The Writ Petition is restored to file.

16. The Writ Petitioner, Shweta, has been living away from the flat since November 2021. We cannot command her to enter the flat again. But we give her that option and leave it her to decide whether she wants to go back to the flat, if so when, and for how long. We are making no other order at this stage. The Writ Petition will be listed before the appropriate Bench in the normal course.

17. We grant the Writ Petitioner liberty to file a formal Interim Application to amend the restored Writ Petition and to seek further relief regarding the Gift Deed that has been now disclosed.

18. We also grant the liberty to the Writ Petitioner to adopt appropriate civil proceedings if so advised.

19. In a case such as this, we would ordinarily have been inclined to impose heavy and even punitive costs. We refrain from doing so only because of the family relations in question and because the 2nd Respondent is a senior citizen.

20. The vakalatnama on behalf the 2nd Respondent is to be filed in the Registry by Friday, 21st April 2023.

(Madhav J. Jamdar, J)

(G. S. Patel, J)