

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2096 OF 2015

MALLESAM RAMCHANDRA NALLA AND OTHERS
VERSUS
MALLESAM VENKATI TATIPAMUL AND OTHERS

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Advocate for Petitioners : Shri N.V.Gaware h/f Smt. P.G.Sontakke
Advocate for Respondents : Smt. M.D.Thube-Mhase

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CORAM : RAVINDRA V. GHUGE, J.
Dated: February 27, 2015
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PER COURT :-

1. I have heard the strenuous and vehement submissions of Shri Gaware, learned Advocate for the petitioners and Smt. Thube, learned Advocate appearing on behalf of the respondents.

2. Shri Gaware has stressed on the due compliance of Order XXI Rule 11 read with form 6 to Appendix "E" of the Code of Civil Procedure ("CPC"). He has conceded that RCS No.409 of 2001 was decreed in favour of the respondents on 23.11.2006. Specific directions were given by the trial Court as are evident in clause Nos.3 to 9, under paragraph No.37 of the said judgment. The RCA No.62 of 2007, preferred by the petitioners was dismissed on 16.1.2013. The Civil Revision Application, filed by them, before this Court was also dismissed on 2.4.2013.

3. The grievance of the petitioners before this Court is as regards proper compliance of Order XXI Rule 11 and form No.6 below Appendix "E". Reliance is placed by Shri Gaware on paragraph No.11 of the judgment

delivered by the learned Division Bench of this Court in the case of M.Chandra Chems Vs. Varma Mukherjee Pvt. Ltd. [2007 (6) BCR 606]. His grievance, therefore, is that the execution proceedings, which ought to be in tune with the provisions of law and especially form 6, has not been fulfilled and as such the property needs to be described as is expected by law and with a proper verification. He has stressed on the declaration part, along with the verification, the description and specification of the property as is required under form No.6.

4. Learned Advocate for the respondent has submitted that in the event there are any short comings in the execution proceedings to the extent to which the petitioners are making a grievance about, the respondents would promptly amend the same, so as to be in tune with form No.6, on the first approaching date in the execution proceedings, bearing R.D.No. 305 of 2013 before the executing Court.

5. After hearing the learned Advocates, after going through the petition paper book and the provisions relied upon by the petitioners and by taking into account the statement made by the respondents, I indicated to the petitioners that this petition was therefore, not required to be kept pending in this Court. Looking at the journey of the litigation and the confirmation of the decree upto this Court, I indicated to the petitioners that they would have to submit an undertaking for vacating the said premises, pursuant to the amendment being carried out by the respondents in the regular darkhast and after the executing court verifies the description / schedule of

the property.

6. Shri Gaware, learned Advocate has placed on record an undertaking on behalf of all the petitioners, duly signed, verified and identified by the first petitioner Mallesham Ramchandra Nalla. Copy of the same has been handed over to the learned Advocate for the respondents, who has expressed her satisfaction as regards the contents set out in the undertaking and the declaration by the petitioners that they would vacate the premises within two months from the date on which the executing Court verifies the description and schedule of the property post amendment being carried out by the respondents.

7. The said undertaking, dated 27.2.2015, is taken on record as an undertaking given to the Court and marked as Exhibit "X". The litigating parties shall produce a copy of the same before the executing Court in RD No.305 of 2013.

8. In the light of the above, this petition is disposed off with a direction to the executing Court that the impugned order dated 12.2.2015 passed below Exhibit 18 shall not be acted upon in the light of the following directions:-

(A) The respondents shall amend the Execution Petition / Regular Darkhast No. 305 of 2013, so as to be in accordance with form 6 under Order XXI Rule 11 of the CPC, as expeditiously as possible and preferably within a period of two weeks from today.

(B) The executing Court shall permit the respondents to carry out the amendment, even on the first approaching date - 10.3.2015.

(C) After the amendment is carried out, the executing Court shall verify and confirm to its satisfaction that the description and schedule of the property in dispute is in accordance with the requirements of Order XXI Rule 11 and form 6 of the CPC. A noting to that effect shall be made on the execution petition itself.

(D) After the executing Court makes a noting of its satisfaction as above, on the Execution Petition, it shall accordingly, direct the judgment debtors, who are original defendants 1 to 3 (the petitioners herein) to vacate the suit premises as described within a period of two months thereafter.

9. Needless to state, in the event these directions and Exhibit "X" are not complied with by the petitioners herein, the order dated 12.2.2015 below Exhibit 18 shall stand revived and executed.

(RAVINDRA V. GHUGE, J.)

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