

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.554 of 2015**

Shri Bernard Pereira, Major of age,
r/o Florian Villa, Dhatt
Vaddo, Tivim, Bardez, Goa,
presently r/o C-5, Golden Croft 155,
D'Monte Lane, Orlem, Malad
(West), Mumbai .. Petitioner

Versus

Shri Devdatta N . Dhond,
Major of age, r/o Dhatt Vaddo,
Tivim, Bardez, Goa .. Respondent

Mr. N. Sardessai, Senior Advocate with Mr. L. Raghunandan,
Advocate for the petitioner.

Mr. Jayant P. Mulgaonkar, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 26th August, 2015.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Mr.
Mulgaonkar, the learned Counsel waives service on behalf the
respondent. Heard finally by consent.

2. By this petition, the petitioner / decree holder is
challenging the order dated 26/06/2015 as also the order dated
08/06/2015 passed in Regular Execution Application No.6/2014/F.
By the order dated 08/06/2015, the prayer for grant of

adjournment for cross-examining the witness Mr. Arjun Aroskar on the ground that the Counsel of the petitioner was unable to cross-examine on account of his health condition, was refused. By the order dated 26/06/2015, the Executing Court has held that the bailiff was informed about the stay order at around 10.40 a.m. by Mr. Arjun Aroskar and at that time, the exercise of handing over possession of the suit shop had not started i.e. till 11.15 a.m. It is, thus, held that the warrant of possession was not duly executed by the bailiff.

3. It appears that by an order dated 30/03/2015, passed in W.P.No.173/2015, this Court had restored the proceedings before the Executing Court to decide the issue as to at what time the Executing Court was informed of the Appellate Court's order, granting stay. This Court had directed that this issue shall be decided on the basis of the facts already on record or on the basis of the evidence led by the parties. The Trial Court was also directed to decide the same in a time bound manner.

4. On behalf of the petitioner, the concerned bailiff was examined and the respondent /judgment debtor examined Mr. Arjun Aroskar on 08/06/2015. On that day, the Counsel Shri A. F. D'Souza appearing for the petitioner, was incapacitated on

account of his health condition and it was informed to the Executing Court that the concerned Counsel has suffered a brain hammerage. The perusal of the order dated 08/06/2015, would show that the Executing Court had found that this was a sufficient ground for grant of adjournment as the Court observed that the Court would not “even hesitate to grant an adjournment.” However, on account of the fact that the matter was directed to be decided on or about 30/06/2015, the Court found itself unable to grant adjournment. Subsequently by the impugned order dated 26/06/2015, the Executing Court acting on the uncontroverted version of Mr. Aroskar, has held that warrant of possession was not duly executed.

5. I have heard Shri Sardessai, the learned Senior Counsel for the petitioner and Shri Mulgaonkar, the learned Counsel for the respondent.

6. It is clear that the Executing Court was also conscious of the fact that the petitioner had sufficient ground for adjournment on account of personal ground and the medical condition of the Counsel. Normally, when such an adjournment was sought on 08/06/2015 and time to decide the issue was to expire around 30/06/2015, there was no reason to refuse the

adjournment. Be that as it may, the fact remains that the ground was sufficient for grant of time to the petitioner to cross-examine Mr. Aroskar. A perusal of the order dated 26/06/2015 and particularly para 8 thereof, would show that the Executing Court has based its finding on the uncontested version of Mr. Aroskar.

7. The learned Senior Counsel for the petitioner also submits that the finding is not in conformity with the direction of this Court. It is submitted that this Court had directed the issue as to when the order of the Appellate Court was communicated, to the Executing Court. The submission is that this specific issue is not addressed.

8. I find that in either case, in the fact and circumstances of the case, the impugned orders will have to be set aside.

9. In the result, the petition is allowed. The impugned orders dated 08/06/2015 and 26/06/2015 are hereby set aside. The matter is restored back to the file of the Executing Court, for deciding the issue afresh, in accordance with the directions contained in the judgment and order dated 30/03/2015 in W.P.No.173/2015, after affording an opportunity to the petitioner/decree holder of cross-examining Mr. Aroskar. The parties to

remain present before the Executing Court on 21/09/2015 at 10.00 a.m. On that day, the respondent/ judgment debtor shall keep the concerned witness Mr. Aroskar present and the petitioner shall ensure that the witness is cross-examined on that day. The Executing Court shall decide the issue as expeditiously as possible and preferably by 19/10/2015.

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

11. It is made clear that the keys of the premises shall continue to be with the Nazir of the Court, as directed in the order dated 30/03/2015 in W.P. No.173/2015.

C. V. BHADANG, J.

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