

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 881 OF 2015.

SHRI BERNARD PEREIRA, PETITIONER.

VS

SHRI DEVDATTA N. DHOND, RESPONDENT.

Mr. L. Raghunandan, Advocate for the petitioner.
Mr. J. P. Mulgaonkar, Advocate for the respondent.

Coram:- K. L. WADANE,J.

Reserved on: 11th December, 2015.

Pronounced on:15th December, 2015.

ORDER

The present petitioner challenges an order dated 12.10.2015 passed by the learned Civil Judge, Junior Division at Mapusa in Regular Execution Application No. 6/2014/F by which the learned Executing Court hold that the warrant of possession was not duly executed. The challenge is on the ground that the impugned order is perverse, illegal, arbitrary and dehorse the directions contained in the judgment passed by this Court in Writ Petition No. 173/2015 dated 30.3.2015.

2. The petitioner is the landlord and the respondent is the tenant. The petitioner filed suit for eviction and obtained a decree of eviction. The petitioner filed execution proceedings. The respondent-tenant filed an appeal against the decree of eviction along with application for condonation of delay wherein

the respondent also prayed for stay order of the execution of the possession warrant. Meantime the bailiff of the Court proceeded to the site to execute possession warrant. According to the petitioner, possession warrant was already executed by the bailiff before the stay was intimated to the Executing Court. Respondent-tenant moved, this Court by way of filing Writ Petition No. 173/2015 wherein it was directed to determine whether execution has taken place or not on 23.9.2014, before the intimation of the Appeal Court order dated 23.9.2014 to the Executing Court. Pursuant to the above directions, the learned Trial Court after recording the evidence of both sides, came to the conclusion that the warrant of possession was not duly executed by the bailiff. Hence, the petitioner-landlord file this present petition.

3. I have heard the arguments of Mr. L. Raghunandan, learned counsel appearing for the petitioner and Mr. J. P. Mulgaonkar, learned counsel appearing for the respondent.

4. Mr. Raghunandan, learned counsel during the course of arguments has argued that the order passed by the learned Executing Court is beyond the scope and the directions given by this Court in Writ Petition No.173/2015 dated 30.3.2015. According to Mr. Raghunandan, direction of this Court was only to see whether the execution has taken place or

not on 23.9.2014 before intimation of the appeal order dated 23.9.2014 to the Executing Court. According to Mr. Raghunandan, it was for the Executing Court to see whether intimation of the appeal Court was received by the Executing Court before 23.9.2014 and the exercise of the executing Court to determine whether possession warrant was duly executed or otherwise is the exercise beyond the scope and directions issued by this Court in Writ Petition.

5. As against this, Mr. J. P. Mulgaonkar, learned counsel appearing for the respondent has argued that execution of the warrant means execution as per law as contemplated in the Civil Manual. It was for the bailiff of the Court to verify and note the inventory of the articles found in the suit premises. It was for the bailiff of the Court to take inventory of all the articles, to prepare detail panchanama and to give vacant possession of the premises to the decree holder. According to Mr. Mulgaonkar, learned counsel, no such activity has been carried out by the bailiff of the Court. By referring to the contents of the report submitted by the bailiff, Mr. Mulgaonkar, learned Counsel has argued that bailiff had not taken detail inventory of the articles lying in the suit premises nor it had removed and taken into custody of the Court, therefore it cannot be said that the bailiff has executed the possession warrant and handed over vacant possession to the decree holder.

6. Considering the arguments advanced by both sides and on perusal of the record including the order of this Court passed in Writ Petition No. 173/2015 and the impugned Order, it is seen that the executing Court was to see whether intimation of the appeal Order dated 23.9.2014 was given or not to the Executing Court before execution of the possession warrant. To consider this limited aspect, apparently, directions appears to be two folded one is that whether the execution has taken place on 23.9.2014 and secondly whether the intimation of the order of appeal Court reached to the Executing Court before the execution of the possession warrant.

7. Execution of the possession warrant is not an empty formality. It is for the bailiff to identify the suit premises and the execution of the possession warrant has to be as per the provisions of paragraph 390 of the Civil Manual which deals with the aspect of giving possession of the immovable property. The relevant paragraph 390 reads as follows:-

“If at the time of putting the decree-holder or purchaser in possession of the house of the judgment debtor, there is any moveable property therein, and the judgment debtor is either absent at the time or unwilling to take such property in his custody or the owner of such moveable property is not know, the bailiff or the officer

concerned, should remove the property to the Court after making a proper inventory thereof, in the presence of respectable witnesses.”

8. Admittedly the Judgment debtor was not present at the site when the alleged execution of the possession warrant was carried out and when the judgment debtor was not present at the site then it is for the bailiff to follow the provisions of paragraph 390 of Civil Manual. In the light of the above observation and the provisions, it is necessary to refer to the report of the bailiff dated 23.9.2014. There is no mention in the report as to at what time bailiff had started taking inventory and what time it was completed. But, however, report discloses that bailiff broke open the lock of the suit premises and had prepared panchanama of the shop i.e fair price shop and there is list/inventory of the articles lying in the shop no.1. The report further discloses that shop no. 2 is a general stores and the bailiff could not make inventory/panchanama of the shop of said grocery shop as there were many small articles. In spite of the said situation he further reported that he handed over custody of the shop to the decree holder and obtained his signature.

9. Apparently report submitted by the bailiff appears to be contrary to the provisions of paragraph 390 of the Civil Manual. Further, it is material to note that the report of the

bailiff says that premises was given in possession of the decree holder and on the contrary from the record it reveals that premises was locked and its keys were handed over to the Nazir of the Executing Court. If at all actual possession rather vacant possession was handed over to the Decree holder then there was no necessity for bailiff to handover all the keys of the premises to the Nazir. What appears from the record is that simply he went to the site and after opening of the premises he prepared report, locked premises and its keys were handed over to the Nazir of the Court. As observed by the learned Executing Court, the possession warrant was not duly executed. I am also of the same opinion based upon the material on record. Therefore, there is no substance in the Writ Petition, therefore, it is dismissed with no order as to costs.

K. L. WADANE, J.

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