

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10186 OF 2015

Pandurang Laxman Jagtap : Petitioner.
Versus
Bhadreshkumar Dwarkadas Gandhi : Respondent.

Mr. R S Kadam for the Petitioner.
Mr. S S Shah for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 26th October 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 26/03/2015 passed by the learned Civil Judge, Senior Division, Barshi by which order the Court Commissioner to execute the sale deed was appointed as also possession warrant of the suit property mentioned in the decree came to be issued.

2 The said order is challenged on the ground that since the relief of possession was not sought in the suit for specific performance, the Executing Court has travelled beyond the decree which was passed. The said contention was not countenanced by the Executing Court. The Executing Court has referred to the judgment of the Apex Court reported in AIR 2001 SC 3712 in the matter of Adcon Electronics Pvt. Ltd v/s. Daulat and anr. as also the

judgment of this Court reported in 2007(4) Mh.L.J.311 in the matter of Kisan Patil v/s. Ragho Patil and has come to a conclusion that even though specific prayer for delivery of possession is not made, still the possession of the property can be delivered to the decree holder as the said relief is ancillary and incidental to specific performance of contract.

3 Before this Court the learned counsel appearing for the Petitioner Shri R S Kadam to buttress the said contention sought to place reliance on the judgment of the Apex Court in *Adcon Electronics Pvt. Ltd.*'s case (supra) as also the judgment of the Apex Court reported in (2015) 8 SCC 219 in the matter of Excel Dealcomm Private Limited v/s. Asset Reconstruction Company (India) Limited and others. In so far as the judgment in *Adcon Electronics Pvt. Ltd.*'s case (supra) is concerned, the same has been dealt with by the Trial Court and the Trial Court was of the view that the said judgment would not aid the Petitioner herein i.e. the judgment debtor in any manner in furtherance of his contention that delivery of possession could not be granted. In so far as the judgment in *Excel Dealcomm Private Limited*'s case (supra) is concerned, the Apex Court has reiterated the well settled position in law that the aspect of delivery of possession being implicit in the decree of specific performance, the said relief can be granted even at the execution stage.

4 The learned counsel appearing for the Respondent herein i.e. the

decree holder states that the decree has already been executed and the possession has already been taken. Though the same is sought to be disputed, the same is not done with any deal of conviction.

5 In my view, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]