

*Sequeira*

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION*

***WRIT PETITION NO. 2370 OF 2015.***

Sushilabai Vasantrao Mamdapurkar  
(since deceased ) through her LR son  
Mr.Hanmant (Arun) Vasantrao  
Mamdapurkar.

.. Petitioner

Vs.

KEM Hospital & ors.

.. Respondents

Mr.Abdul R.Shaikh, for the Petitioner.  
Mr.Jaydeep Deo, for Respondents.

***CORAM: N.M.Jamdar, J.  
Wednesday 15 April, 2015***

**Oral Order :**

By this petition, the Petitioner challenges the order passed by the learned District Judge, Pune rejecting Review Application filed by the Petitioner against the order dated 18 June 2014 passed by the executing Court.

2 The petition is filed by the tenant. The Respondents are the landlords. The suit premises are three rooms and a passage with sanitary block admeasuring 395 sq.ft. in C.T.S No.498, Rasta Peth, Pune. The Respondent-King Edward Memorial Hospital is a public charitable trust which runs a multi facility 550 bedded hospital. The suit was filed by the Respondents-Trust bearing No.312 of 2008

seeking possession of the property from the Petitioner on the ground that it was required for the purpose of the hospital. The suit was decreed by the Small Causes Court, Pune on 18 August 2009. The appeal filed by the Petitioner to the District Court, Pune was dismissed on 23 December 2011. Thereafter the Petitioner filed Revision application which was disposed of on 22 June 2012 granting one year's time to the Petitioner to vacate the premises.

3 When the Petitioner did not vacate the premises, the Petitioner instituted execution proceedings in the Small Causes Court Pune. In these proceedings, the Petitioner filed application-cum objections under Section 47 read with Order 21 Rule 97 of Code of Civil Procedure. The Petitioner contended that the decree was obtained by fraud and concealment of facts. According to the Petitioner, from certain facts as regards, plans sanctioned by the Municipal Corporation and on the basis of the same, it was urged that the decree was obtained by fraud. Applications were filed by the Petitioner to submit the names of trustees for issuance of witness summons to the Municipal Commissioner, PMC and the Charity Commissioner, Pune etc. The Small Causes Court, considered the objections and observed that the grounds which were urged were near about the same grounds which were already decided and confirmed upto the High Court. The learned Judge observed that the Petitioner was abusing the process by filing different applications on different points at different stage ,which cannot be permitted. The learned Judge Small Causes Court,

observed as under :

*“25] Not only this, when the Hon'ble District Court has pleased to dismiss the appeal preferred by JDs by challenging the order passed by my ld. Predecessor at Exh.13 dated 10.10.2013, the JDs have played another trick to prolong the matter and thereby filed transfer application bearing Misc. Civil Application No. 36 /2014 before the Hon'ble District Court, Pune on 15.1.2014. So the purpose of filing of said transfer petition was only to prolong the matter by hook or crook and nothing other than that. After all these things also the JDs have not stopped and they have filed these number of applications before this Court with a view that this Court should not proceed further and to issue warrant of possession in order to handover the possession of the suit premises to DH. The entire conduct of JDs in filing different kind of applications inspite of the deadline given by the Hon'ble High Court up to 31.10.2013, the JDs are not intending to handover the vacant possession of the suit premises to DHs and to respect the order of Hon'ble High Court as well as Hon'ble District Court, Pune. The filing of different kind of applications in spite of rejection of first objection (Exh.13) under Sec. 47 r/w. Order 21 Rule 97 of C.P.Code and nondelivery of possession of the suit premises, inspite of sufficient time by the Hon'ble High Court, is nothing but abuse of the process of law. Therefore, if this kind of practice is allowed in the Court then it will be difficult for the honest decree holder to enjoy the fruits of the decree. If such kind of false and frivolous applications are entertained, the decree, even that is confirmed up to Hon'ble High Court cannot be executed in time”.*

After holding as above, the objections and applications were dismissed on 5 February 2014 by the Small Causes Court, with costs of Rs.5,000/-.

4      Thereafter the Petitioner filed an appeal in the District Court bearing No.130 of 2014. The Appellate Court considered the matter in detail and the various decisions cited by the parties and dismissed the appeal by order dated 18 June 2014. Thereafter the Petitioner filed a Review application bearing No.8 of 2014 which was dismissed on 2 January 2015.

5      The learned counsel for the Petitioner submitted that since the decree was obtained by fraud this point was taken in the execution proceedings. He submitted that the Respondent-Trust had suppressed the true bonafide need of the Respondents and once the Petitioner came across the evidence regarding the true state of affairs, it was pointed out in the execution proceedings which ought to have been considered.

6      Not only the submissions need be rejected outright, but the manner in which the Petitioner has proceeded needs to be deprecated. When the suit tried, the Petitioner had all the opportunity to put forth his case. The Petitioner fully availed of the same. Thereafter the Petitioner had full opportunity to argue the appeal on merits and thereafter the revision in this Court. It also needs to be noticed that the Respondent is a trust and there is a presumption in law as regards its bonafide requirement. All points which are sought to be taken in the execution proceedings are on merits of the claim put up by the Respondent-trust and which has already been adjudicated. In spite of this Court granting one year's

time to vacate, not only the Petitioner has not vacated but has persisted in filing frivolous applications. It is informed that the Respondent after the impugned orders has obtained the possession of the premises. But the facts remains that the Petitioner has persisted with the litigation.

7 The learned counsel for the Respondents relied upon the decision of the Apex Court in the case of **M.Nagabhushana Vs State of Karnataka and others** reported in (2011) 3 Supreme Court Cases 408, wherein the Apex Court has observed as under -

*“27. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of Constructive Res Judicata, as explained in explanation IV to Section 11 of the CPC, are also applicable to writ petitions.*

*28. Thus, the attempt to re-argue the case which has been finally decided by the Court of last resort is a clear abuse of process of the Court, regardless of the principles of Res Judicata, as has been held by this Court in **K.K. Modi v. K.N. Modi and Ors.** : (1998) 3 SCC 573. In paragraph 44 of the report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below:*

*One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata....*

*29. In coming to the aforementioned finding, this Court relied on the Supreme Court Practice 1995 published by Sweet & Maxwell. The relevant principles laid down in the*

*aforesaid practice and which have been accepted by this Court are as follows:*

*This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. .... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”*

8 In the aforesaid case, the Apex Court awarded exemplary costs upon the Appellant. In the present case also the conduct of the Petitioner, as noted above would call for exemplary costs. The conduct of the Petitioner has to be strongly discouraged. This could be a case of a very heavy costs but however since the Respondent has already taken possession of the property, I am inclined to not impose not very exemplary costs but substantial to send a message to inculcate sense of discipline amongst litigants.

9 Accordingly, Writ petition is rejected with costs of Rs.25,000/- to be paid by the petitioner to the Respondent within a period of four weeks from today. If the costs is not so paid, they shall be entitled to be recovered as arrears of land revenue. All authorities will act on authenticated copy of the order in that regard.

*(N.M.Jamdar, J.)*