

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1921 OF 2012

M/s. Navlakha Agro Equipments .. Petitioner.
V/s.
Smt. Zainabi K. Bhoari
& Others .. Respondents.

Mr. Draupad S. Patil, for the Petitioner.
Mr. K. P. Shah, for Respondent No.11.

CORAM: G.S.KULKARNI,J.

DATE : 26th FEBRUARY, 2015.

PC:-

This Petition challenges the order dated 28th November, 2011 passed by the learned District Judge, Pune whereby an application of the Petitioner seeking restoration of the miscellaneous appeal filed by the Petitioner. The Petitioner has filed the Miscellaneous Appeal assailing the rejection of its injunction application in the execution proceedings adopted by the Respondents.

2 The execution proceedings arise out of a decree in Civil Suit No.4289 of 1962. The decree has attained finality in view of the orders passed by the Apex Court.

3 In the course of the execution proceedings, the Petitioner obstructed the execution by filing a Miscellaneous Application No.108 of 2006 in which the Petitioner had inter alia prayed for an injunction in

respect of a property, subject matter of the decree. This application was contested by the Respondents on merits.

4 The learned Executing Court by an order dated 18th December, 2006 rejected the said application of the Petitioner. The Petitioner, therefore, preferred Miscellaneous Appeal No.42 of 2007 before the Court of the learned District Judge, Pune. It appears from the record that the Petitioner did not prosecute the said appeal and remained absent when the said appeal was listed on 24.04.09, 19.06.09, 13.07.09, 12.08.09, 03.10.09, 07.11.09, 27.11.09, 18.12.09, 22.01.10, 19.02.10, 11.03.10, 28.04.10, 16.06.10 and 14.07.10. Both the the Petitioner and his Advocate had remained absent. The learned District Judge was pleased to pass the following order on 14th July, 2010, dismissing the Miscellaneous Appeal for non-prosecution :-

“ Appellant and his Advocate absent when called out Respondent & his advocate absent when called out court passed order below Ex-1 since 24/4/09 no one is appearing for appeal it shows that appeal is not interested in this appeal hence 42/07 is dismiss.”

5 The Petitioner being aggrieved by the above order dated 14th July, 2010 passed by the learned District Judge dismissing their appeal for non-prosecution, filed Miscellaneous Application No.867 of 2010, seeking restoration of the Miscellaneous Application. By the impugned order, the learned District Judge has rejected the said application of the Petitioner.

6 At the outset, it may be observed that the proceedings have a checkered history which arises out of the suit filed in the year 1962. The decree has attained finality. The learned Counsel for the Petitioner fairly conceded that after the decree, the Petitioner has been dispossessed in

execution proceedings from the premises in respect of which the Petitioner is asserting its rights. It is the case of the Respondent that the premises were demolished and that further construction has commenced.

7 Be that as it may, the issue in the present proceedings is limited only with regard to the challenge to the impugned order dated 28th November, 2011 passed by the learned District Judge, dismissing the Petitioner's application for restoration of the Miscellaneous Appeal.

8 Learned Counsel appearing for the Petitioner submits that the learned District Judge ought to have restored the Miscellaneous Application so as grant an opportunity to the Petitioner of a hearing on merits. He submits that no prejudice would be caused to the Respondents if this prayer is granted. He submits that though the Petitioner was absent on several occasions, on one date namely – on 28th April, 2010 the Petitioner had remained present though his Advocate was absent.

9 On the other hand, learned Counsel appearing for the Respondent has vehemently opposed this Writ Petition. He submits that there is no illegality or perversity in the impugned orders passed by the learned District Judge. He submits that the learned District Judge had taken into consideration all the preceding facts and has recorded about the consistent absence of the Petitioner to pursue the proceedings right from the year 2009. He, therefore, submits that no case has been made out by the Petitioner to call for any interference in the extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India.

10 Having considered the rival submissions made on behalf of the parties. It is clear that the proceedings have a checkered history

starting from the year 1962. After several proceedings between the parties, the decree passed by the Trial Court had attained finality. In the execution proceedings, the Petitioner moved an application and asserted his rights in respect of the part of the premises. This application came to be rejected by an order dated 18th December, 2006 which was assailed by the Petitioner in the Miscellaneous Appeal which came to be dismissed for non-prosecution. The learned District Judge in his detailed order has taken into consideration all the facts and has recorded that the Petitioner had remained absent on several dates i.e. 24.04.09, 19.06.09, 13.07.09, 12.08.09, 03.10.09, 07.11.09, 27.11.09, 18.12.09, 22.01.10, 19.02.10, 11.03.10, 28.04.10, 16.06.10 and 14.07.10. The conduct of the Petitioner not to pursue the proceeding since 2009 is apparent. This is definitely not a conduct of a diligent litigant who is bona fide pursuing his rights before the Court. The conduct appears to be absolutely callous. The legal process cannot be permitted to be utilized in this manner to the prejudice of the bona fide litigants by persons who are outside the suit. In the circumstances, I do not find anything perverse and/or illegal in the learned District Judge rejecting the restoration of the Miscellaneous Appeal which was not prosecuted on one occasion but for a large period from the year 2009 till its dismissal on 14th July, 2010.

11 **Writ Petition** is devoid of merits and is summarily **dismissed**.
No order as to costs.

(G.S.KULKARNI,J.)