

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 2562 OF 2015

The Board of Trustees of the Port of Mumbai. .. Petitioner
Versus
M/s. Anil Traders & Ors. .. Respondents

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Mr. Ajay Fernandes a/w Ms Sneha Pandey i/b Motiwalla & Co. for
Petitioner.
Mr. A. A. Sapre a/w Ms. Shruti Jain i/b SSJ Associates for Respondent
Nos. 3 to 5, 16, 18 and 28 to 49.

CORAM : M. S. SONAK, J.
DATE : SEPTEMBER 14, 2015.

P.C.:

Heard the learned counsel for the parties.

2] Learned counsel for the petitioners stated that service has been duly effected to the respondent. Necessary affidavit of service has also been filed in the matter. On 7th August 2015, when the rule was granted in this petition, it was made clear that it would be taken up for final disposal on 14.09.2015.

3] The impugned order dated 23.08.2014, was stayed by observing thus ;

“3. Insofar as interim relief is concerned, there is no necessity to stay the proceedings pending before the Small Causes Court. Instead, it would be appropriate if the impugned order dated 23.08.2014 is stayed. Accordingly, there shall be a stay upon the impugned order dated 23.08.2014. The brief reasoning for grant of interim relief in

this manner is set out hereafter.”

4] Ms. Pande, learned counsel for the petitioner has made two submissions in support of this petition :-

a) That the trial Court, having itself recorded a finding that application similar to the one which has now been granted by the impugned order, having been dismissed at earlier stage and the same constitutes res-judicata, there was no question of entertaining the application at Exh. 393 and making the impugned order;

b) That the decree, which was made some time in the year 1982-83 was in respect of final plot No. 59-E. The obstruction, may be by several persons, was to the execution of the decree in respect of final plot No. 59-E. In such circumstances, the petitioner was justified in taking out only one obstructionist notice No. 130/1986 and there was legally no requirement for taking out 49 separate obstructionist notices. Ms. Pande submitted that a purely procedural objection of this nature ought to have been raised at the earlier stage and not after the period of 28 years had lapsed from the date the petitioners took out the obstructionist notices.

5] Mr. Sapre, learned counsel for the respondent no. 3 to 5, 16, 18 and 28 to 49, submitted that the order made is purely a procedural order and the same is consistent with the provision contained in the Order I Rule 2 of the CPC, which vests with the court with the

power to order separate trials. Mr. Sapre submitted that since, each of the obstructionist who occupies separate units in the buildings erected upon final plot No. 59-E, have to plead and establish their independent rights in respect of each of such units, it is only appropriate that the petitioner be directed to take out 49 separate obstructionist notice, so that the same can be effectively disposed of by the Court.

6] Having heard the learned counsel for the parties, in my Judgment, the impugned order dated 23.08.2014 it is not sustainable. In the first place, the Trial Court has itself held that an application similar to the one at Exh. 393 was taken out earlier by some of the obstructionist, being, application at Exh. 100. The same was rejected by the trial court. In these circumstances there was no justification to re-entertain another application seeking substantially the same reliefs.

7] That apart, the decree of which the execution is applied for was made some time in the year 1982-83. The obstructionist notice was taken out in the year 1986. Assuming that the Court had power to order separate trial under Order I Rule 2 of the CPC, such power, obviously, is required to be exercised at the earliest instance and not after a period of 28 years, as has been done in the present case.

8] Further, the petitioner has applied for execution of the decree which is in respect of final plot No. 59-E. It is possible that the

occupants of the building in or upon the said plot may have their own case in the matter. However, since, the execution is in respect of plot No. 59-E, it cannot be said that the petitioner was dis-entitled in law or even otherwise not justified in taking out the single obstructionist notice. There is no justification whatsoever, after the matter had reached the stage of trial and the proceeding were at a sufficiently advanced stage to making the impugned order which would perhaps, only contribute to the delay in the disposal of the obstructionist proceeding.

9] In the impugned order, the Trial Court has itself stated that though separate obstructionist notice will be registered, for sake of convenience, all of them will be conducted simultaneously and expeditiously as the original obstructionist notice is very old. This itself negates the theory that the trial in the obstructionist notice will either embarrass or delay the proceeding. There was really no justification to make the impugned order.

10] The revisional court has not commented upon the merits of the impugned order but merely dismissed the revision application on the ground that the impugned order dated 23.08.2014 was not revisable.

11] It needs to be clarified that this writ petition challenges not merely the order dated 23.08.2014 (at Exh. 'O') but also 25 other

identical orders made by the trial court.

12] For the aforesaid reasons, Rule is made absolute in terms of prayer clause (a). There shall be no order as to costs.

13] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**