

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3127 OF 2015

Smt. Kamal G. Jaiswal

.. Petitioner

vs.

Mr. Shailesh S. Khochare

.. Respondent

Mr. A.R. Gole for the Petitioner.

Mr. Shriniwas Bhawe a/w. Ms Aarti Kulkarni i/b Bhawe and Co. for Respondent.

CORAM : M. S. SONAK, J.

DATE : 1 April, 2015.

P.C. :-

1] Not on board. Upon production, taken on board.

2] This petition challenges the order dated 6 February 2015, by which the 6th Joint Civil Judge, Senior Division, Thane has rejected the petitioner's application for interim protection under Section 9A(2) of the CPC, pending consideration of the application made under Section 9A of the CPC by the respondent-defendant.

3] There is already an eviction order issued by the competent authority against the son of the petitioner, in respect of the suit premises. The proceedings against such order of eviction taken out by the son have failed. The petitioner had also taken out the proceedings against the eviction order, but it is submitted that the same were not pursued, because the claim of the petitioner was on basis of Memorandum of Understanding (MOU) dated 15 June 2012 and therefore, the petitioner was advised that her appropriate remedy would be to approach the Civil Court. Nevertheless, the fact

remains that there is an order of eviction issued by the competent authority against the petitioner's son, in respect of the suit premises. Therefore, if any, restraint order is granted, the same in effect would stall the execution of the eviction order made by the competent authority, which has since attained the finality.

4] In so far as the case based upon the MOU dated 15 June 2012 is concerned, it is to be noted that such MOU is neither registered, nor admitted as having been executed by the respondent/defendant. In fact, the respondent-defendant has filed a FIR alleging that the said document is a forgery and fabrication. The petitioner is currently out on bail in regard to the said FIR.

5] The MOU, which the respondent/defendant alleged as being a forgery makes reference to payment of an amount of Rs.8,50,000/-, by way of renovation purportedly carried out by the petitioner to the suit premises. The MOU further states that an amount of Rs.1 Lac was purportedly paid in cash at the time of entering into the MOU. The MOU further records that the balance payment of Rs.50 Lacs is to be effected by way of two installments of Rs.25 Lacs each on or before May 2017. Thus, in effect, there is no cogent material on record to establish actual payments to the respondent, in pursuance of the MOU.

6] In such circumstances, the document in question, which is even otherwise not registered, hardly inspires any confidence. Based upon such document, it cannot be said that the petitioner has made out any *prima-facie* case. Besides, the balance of convenience can

also not be said to be in favour of the petitioner. This is because, admittedly, the petitioner has been residing in the suit premises alongwith her son and the son is already facing an eviction order in respect of the very premises from the competent authority. Such eviction order has attained the finality at least in so far as this Court is concerned. The petitioner also made attempts to stall the eviction by taking out proceedings against the eviction order made by the competent authority. Such proceedings have also not met with success.

7] Considering the aforesaid circumstances, no fault can be found with the conclusion recorded in the impugned order. Accordingly, the present petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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