

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

WRIT PETITION NO.3820 OF 2015

Sudhakar Sadashiv Sawant and ors. : Petitioners.
Versus
Anita Anant Sawant : Respondent.

Mr. U P Warunjikar for the Petitioners.
Mr. S S Dhuri for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 12th October 2015

P.C.

1 The above Petition exemplifies one more instance of a judgment debtor seeking to stall execution of the decree on one ground or the other.

2 The above Writ Petition takes exception to the order dated 19/03/2015 passed by the learned Civil Judge, Junior Division, Shriwardhan by which order the Applications (Exhibits 205 and 207 filed by the Petitioners whereby the Petitioners had sought review of the order dated 16/02/2015 and stay of the execution proceedings pending the consideration of the review application came to be rejected.

3 The decree in question has been passed in a suit filed under Section 6 of the Specific Relief Act which decree has been confirmed right upto the Apex Court. This Court had an occasion to deal with the order which was

passed in the execution proceedings on the Applications (Exhibits 146 and 149) filed by the decree holders for amendment of the execution application so as to include the premises “hall”. This Court had set aside the order passed on the Applications (Exhibits 146 and 149) by the judgment and order dated 18/11/2011 and remanded the matter back to the Executing Court for deciding the said Applications (Exhibits 146 and 149) *denovo*. It is on remand that the Executing Court passed the order dated 15/12/2011 holding that “hall” is a part of the suit premises and accordingly allowed the Application (Exhibit 146). It is thereafter that the instant Application (Exhibit 202) came to be filed by the Plaintiff in which order dated 16/02/2015 came to be passed. In the context of the challenge raised in the above Petition it would be apposite to reproduce the operative part of the order dated 16/02/2015 which reads thus :-

- “1] Issue possession warrant as per original decree in R.C.S. No.11/1989.
- 2] The bailiff is directed to execute the decree by breaking the lock if any on the suit house, rooms in the suit property and the gate.
- 3] Police protection (male as well as female) is allowed at the time of and for execution of the decree at the cost of the decree holder.

4] The possession warrant shall be returnable on
16/03/2015.”

4 It appears that prior thereto the application (Exhibit 182) filed by the decree holder for executing the decree in terms of the decree as originally passed in Regular Civil suit No.11 of 1989 and issuance of possession warrant in terms thereof came to be allowed by the Trial Court by order dated 17/10/2013. The said order dated 17/10/2013 came to be challenged by the Petitioners by way of Writ Petition No.3759 of 2014. The said Writ Petition came to be dismissed by this Court by the order dated 04/04/2014 and the submission made on behalf of the Petitioners as regards the description of the property in the Executing Court was not countenanced by this Court. Significantly the said order has not been annexed to the above Petition.

5 After the order dated 16/2/2015 came to be passed by the Executing Court that the Applications (Exhibits 205 and 207) came to be filed by the Petitioners. The said applications were, as indicated above, for the review of the order dated 16/02/2015 and for interim relief pending consideration of the said review application. The review of the said order dated 16/02/2015 was sought on the same grounds as was the basis for the challenge raised in the earlier Writ Petition No.3759 of 2014.

6 The Trial Court in the instant case i.e. the Application (Exhibit 205) did not deem it appropriate to countenance the grounds on which the review was sought. The Trial Court observed that there is no error apparent on the face of the record for the review jurisdiction to be exercised and accordingly rejected the application (Exhibit 205). Since the application (Exhibit 207) was contingent upon the application (Exhibit 205), same accordingly stood rejected on the rejection of the application (Exhibit 205).

7 The learned counsel for the Petitioners Shri Warunjikar would once again seeks to reiterate the case of the Petitioners i.e. the judgment debtors as regards the description of the property and sought to take exception to clause (I) of the order dated 16/2/2015.

8 In my view, the said submission can only be termed as the last straw on the camel's back to oppose the execution of the decree which has been passed in favour of the decree holder. As indicated above, the instant Petition is an attempt by the judgment debtors to stall the execution of the decree passed by a competent court. In that view of the matter, 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]