

Sequeira

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

WRIT PETITION NO. 4440 OF 2015.

Shri Ramji Sakharam Rao. .. Petitioner

Vs.

Abdulla Majid Saheb Jendi
(Since deceased)

1. Smt.Fatima Abdullah Jendi & ors. .. Respondents

Ms.Rajrani Khosla, for the Petitioner.

None for Respondents.

***CORAM: N.M.Jamdar, J.
Thursday 30 April, 2015***

Oral Order :

By this petition, the Petitioner challenges the order 24 March 2015 passed by the learned Judge, Small Causes Court in Execution Application No.303/2009 in RAE and R Suit No. 609 / 1451 of 1993.

2 The Petitioner has not annexed the copy of the impugned order, however, during the hearing of the petition the learned counsel for the Petitioner has placed the same on record.

3 The RAE Suit of 1993 was dismissed. The Appeal No.663 of 2003 was also dismissed filed by the Petitioner. The Writ petition filed by the Petitioner bearing No.1829 of 2008 was also dismissed by order dated 26 March 2008. While disposing of the Writ

Petition No.1829 of 2008, this Court had directed as under -

“7. In the light of the statement of Mr.Dhamal, this petition is dismissed by the following order:-

(a) W.P.1829 of 2008 stands dismissed and judgement and order of the lower appellate court is confirmed, subject to petitioner’s rights and contentions in Suit No.3191 of 2007 being not adversely affected. Appellate Court’s decree is without prejudice to the rights and contentions of both sides in the special civil suit. However, the decree shall not be executed for a period of one year from today. Within this period, if the petitioners and other tenants are able to obtain any orders to protect their possession, then, the execution shall abide by such directions as are issued in that behalf. However, if no orders are passed in the Suit No.3191 of 2007, either by the trial court or by this Court, within a period of one year from today, then the decree passed shall become executable and enforceable forthwith. Respondents will be at liberty to adopt proceedings for executing the same.

(b) Petitioner not to be evicted from the suit premises for a period of one year provided he executes an undertaking in this Court setting out that he and his family members alone are in possession and that no third party rights shall be created in any manner. Till the period prescribed above, without prejudice to the rights and contentions of the petitioners, they shall pay monthly compensation quantified at Rs.25 per month and pay arrears thereof.

4 The learned counsel for the Petitioner states that the Petitioner has not been able to get any order within the period of one year in the suit referred to in the above quoted direction. The order dated 24 March 2008 is clear and self-operative. The decree which is sought to be executed by the impugned order was to become effective within period of one year from 24 March 2008 i.e.

by 25 March 2009, if the Petitioner did not obtain any order from the suit pending before the City Civil Court. Neither the Petitioner has obtained any order in the said Suit nor has sought any extension of the order dated 24 March 2008 within a period of one year. There is no explanation at all as to why these steps were not taken. In view of the order dated 24 March 2008, which has become final in absence of any challenge, there is no question of granting any relief to the Petitioner. The Petitioner will have to abide by the statement made by the Petitioner in Writ Petition No.1829 of 2008 which was disposed on 24 March 2008.

5 The Writ petition accordingly cannot be entertained and is rejected.

(N.M.Jamdar, J.)