

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4571 OF 2015

Sharad B. Latkar

.. Petitioner

vs.

Sharad V. Gujar and anr.

.. Respondents

Mr. V.S. Talkute for the Petitioner.

CORAM : M. S. SONAK, J.

DATE : 5 May, 2015.

P.C. :-

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

2] This petition challenges the order dated 24 April 2015, by which the executing Court has appointed a Commissioner for the purposes of execution of the decree which *inter alia*, involves demolition of the suit shed and handing over the possession of the property beneath the shed to the decree holders.

3] Mr. Talkute, learned counsel for the petitioner submitted that the decree in question only contemplated removal/demolition of the suit shed and that there was no further question of restoration of possession to the decree holders. On such basis, Mr. Talkute submitted that the impugned order, which directs the Commissioner to, *inter alia*, restore possession or handing over possession to the decree holders is clearly in excess of jurisdiction and therefore, warrants interference.

4] In Second Appeal No. 705 of 2014, instituted by the very petitioner, virtually an identical contention was raised and the same

was rejected by this Court by observing thus:.

“18) Mr. Talkute submits that in any case the direction of the Executing Court to hand over possession after removal of the shed was clearly without jurisdiction, it being beyond the decree. I find no merit in the argument. Because, when the appellant carried out the construction of shed during pendency of the suit, he had deprived the respondents of joint possession of the land under the shed. Direction for restoration of that possession cannot be said to be a direction beyond the decree.”

5] In fact, this Court in its aforesaid order, dated 27 February 2015, at paragraph 21, made the following observations.

“21) Mr. Thorat, submits that this is a fit case for award of exemplary costs against the appellant. The respondents have been put to unnecessary expenses by the appellant by abusing the process of law and by filing appeals which were clearly not maintainable. There is substance in the argument of Mr. Thorat. The appellant is therefore, directed to pay the costs quantified at Rs.50,000/(Rs. Fifty Thousand Only) to the respondents.”

6] The contention now raised by and on behalf of the petitioner, is in no manner qualitatively different from the contention raised in the aforesaid Second Appeal No. 705 of 2014. Mr. Talkute, learned counsel for the petitioner, however, submitted that this Court, in its order dated 27 February 2015 has held that the Second Appeal was itself not maintainable and consequently any observations therein, cannot be relied upon to non-suit the petitioner.

7] Admittedly, the order dated 27 February 2015 made in Second Appeal No. 705 of 2014, stands as on date. The same has not been upset by the Hon'ble Apex Court nor the same has been reviewed by the same Court. No doubt, there is observation that the

appeals preferred by the petitioner to the District Court or this Court were not maintainable. However, the same were in the context of certain obstructionist proceedings taken up in the matter of execution of decree in question. At this stage, the finding that directions for restoration of possession is not beyond the decree made, cannot be ignored.

8] Accordingly, there is no merit in the challenge to the impugned order. Hence, petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

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