

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1170 OF 2015
IN
CIVIL WRIT PETITION NO.8936 OF 2014

Mr. Ranga Singh Soar.] ... Applicant

In the matter between :

Mr. Ranga Singh Soar.] ... Applicant

Versus

1. Shri Laxmikant M. Sharma]
 2. Mr. Mithailal Shaligram Teli & Anr.] ... Respondents

Mr. Ashish Dubey i/b T. R. Patel for Applicant.

Ms. Shweta Sharma i/b Mr. Siddharth Sharma for Respondent No.1.

CORAM :- M. S. SONAK, J.

DATE :- JUNE 24, 2015

P. C. :-

1. This is an application by the Petitioner, seeking restoration of possession of suit premises being Shop No.02, Solicitor Compound, Malad (East), Mumbai - 400 097, on the ground that despite the status-quo order granted by this Court restraining execution of the impugned decree, the Bailiff of the Small Causes Court proceeded to

execute the decree and in pursuance thereof, has deprived the Applicant of possession and presently the suit premises are locked.

2. The Respondents were duly served with the application and were also offered an opportunity to file their reply. The learned Counsel for Respondent No.1 has chosen, however, to file the Bailiff's report dated 18/04/2015 and submitted that on the said date, there was no interim relief operating in favour of the Applicant and therefore there was no infirmity in the Bailiff of the Small Causes Court executing the impugned order. The learned Counsel for Respondent No.1 submitted that the Applicant is in illegal occupation of the suit premises for the last 38 years and therefore no equitable order be made in favour of such an Applicant.

3. Records disclose that interim order having the effect of restraining the execution of impugned decree was first handed by this Court on 01/10/2014. The same was continued on 07/10/2014. On 06/02/2015, this Court recorded statement of the learned Counsel for Respondent No.1 that till 09/02/2015, there client shall not take steps to execute the order passed by the Small Causes Court, Bandra, in Execution Application No.74 of 2013. The statement was accepted and the matter was posted for 09/02/2015. On 09/02/2015, once again, *status-quo* was directed in the matter of execution of warrant of possession till further orders and the matter was stood over to 16/02/2015.

4. On 17/02/2015, this Court once again directed the *status-quo* order to continue until 23/02/2015. On 25/02/2015, the matter was stood over to 03/03/2015 and the *status-quo* order was directed to continue until the next date.

5. On 03/03/2015, there is an endorsement that the matter stood over to 17/03/2015. There is no reference to any *status-quo* order. On 18/04/2015, however, this Court directed the placement of this matter on board on 27/04/2015 and for ad-interim order to continue. On this date, the learned Counsel for Respondents stated that the possession of the premises has been taken over 'today' through the Bailiff.

6. From the aforesaid chronology of events, it is clear that interim order restraining execution of the decree was in operation from 01/10/2014. True, there was no express order made on 03/03/2015 when the matter was posted for 17/03/2015. It is possibly because no plea was made for extension on the said date through inadvertence. Nevertheless, it is quite clear that the matter was not really taken on 03/03/2015 to consider the issue of continuation or vacation of the interim relief which had continued since 01/10/2014. It was really not expected of the Respondents to have taken such advantage of perhaps the accidental slip and proceeded to execute the decree.

7. Further, the Bailiff's report makes reference only to the order dated 05/02/2015 made by the Small Causes Court, without any reference to the orders made by this Court right from 01/10/2014. This is also not proper. In a situation of this type, even Small Causes Court should have ascertained the position of interim orders in this Writ Petition, which questions the orders of eviction.

8. The question as to whether the Applicant is an illegal occupant or not can always be decided at the hearing of the petition or at the stage of admission of the petition. However, there is no reason to deny the Applicant relief in this Civil Application, particularly when the facts do bear out that the interim orders made from time to time were in operation and the execution has taken place despite the same. Accordingly, this Civil Application is made absolute in terms of prayer clauses (i). In fairness, it may be stated and recorded that the learned Counsel for Respondent No.1, without prejudice to the rights and contentions of the Respondent No.1, has stated that the possession of the suit premises will be restored to the Applicant on 29/06/2015 at 12.00 noon. The Civil Application is disposed of in the aforesaid terms.

(M. S. SONAK, J.)