

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.4895 OF 2014

Ramsagar Shivmurti Yadav.] ... Petitioner

Versus

State of Maharashtra and Ors.] ... Respondents

Mr. K. K. Tripathi i/b Mr. P. R. Pandey for Petitioner.

Mr. A. R. Metkari, A.G.P for Respondent No.1.

Mr. Rajesh S. Datar for Respondent No.4.

CORAM :- M. S. SONAK, J.

DATE :- JUNE 24, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. This petition challenges order dated 08/05/2014 made by the learned 6th Joint Civil Judge Senior Division, Thane, declining *ex-parte* stay on the execution of eviction decree in an application under Section 47 of the CPC taken out by the Petitioner.

4. Now that so much period has elapsed, it would have been appropriate if the ad-interim order granted by this Court in this petition is continued until the learned 6th Joint Civil Judge Senior Division at Thane disposes of Petitioner's application under Section 47 of the CPC. However, the learned Counsel for Petitioner as well as the learned Counsel for decree holder submit that the only objection raised in the application under Section 47 of the CPC is that since the decree of eviction was made by the Court of Civil Judge Junior Division, the execution proceeding would also lie before the said Judge and not before the Civil Judge Senior Division.

5. At least, *prima facie*, there is no reason to accept the aforesaid contention, particularly in light of decision of this Court in the case of ***Vijaykumar s/o Vinayakrao Pathak & Anr. Vs. Madhukar s/o Dinkar Chitale***¹. However, the learned Counsel for decree holder submits that rather than delaying the execution proceedings any further on such an issue, he would have no objection, if the execution proceedings are made over to the Court of Civil Judge Junior Division and directions are issued for expeditious completion of the execution process, without going into the legality of the contention raised by the learned Counsel for Petitioner. The learned Counsel for decree holder submitted that the execution application had been filed by the decree holder before the Court of Civil Judge Senior Division for administrative purpose and to the decree holder, there is no difference if the execution is carried out by either of the Courts.

¹ 2002 (1) ALL MR 763

6. In view of the aforesaid and without deciding the legal issue raised, the learned Civil Judge Senior Division, Thane, is directed to make over the execution petition to the Court of Civil Judge Junior Division within a period of two weeks from today. Upon receipt of the execution application, the Court of Civil Judge Junior Division, Thane, to proceed with the execution of the decree in accordance with law as expeditiously as possible and in any case, complete the execution proceedings within a period of three months from the date of receipt of execution papers.

7. It is however clarified that though there will be no necessity for decree holder to make any fresh application for execution. In the application already made, the Petitioner herein will be heard. For this purpose, the parties to appear before the Civil Judge Senior Division at Thane and produce authenticated copy of this order on 29/06/2015 at 3.00 p.m.

8. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

9. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)