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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1122 OF 2014  
IN  
NOTICE OF MOTION NO.3319 OF 2013  
IN  
S.C. SUIT NO.1173 OF 1971

|                            |                |
|----------------------------|----------------|
| Tarachand M. Mishra        | ...Appellant   |
| V/s.                       |                |
| Kanhaiyalal P. shah & Ors. | ...Respondents |

Mr.V.T. Dubey i/b Mr.S.S. Mishra for the Appellant.

Mr.S.N. Vaishnawa with Ms.Nupur J. Mukharjee i/b Mr.Vipul Shukla  
for the Respondent Nos.1 to 9.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 19TH NOVEMBER, 2015.**

**P.C. :-**

1. By this appeal the appellant has challenged the impugned order dated 22<sup>nd</sup> April, 2014 passed by the learned Judge of the Bombay City Civil Court, Greater Mumbai dismissing Notice of Motion No.3319 of 2013 with compensatory costs of Rs.20,000/-.

2. Mr.Vaishnawa, learned counsel appearing for the original plaintiffs invited my attention to the prayers in the notice of motion filed by the appellant herein seeking stay of the execution proceedings till the decision of the Review Petition (Civil) No.1435-1436 pending in the Supreme Court. It is submitted by learned counsel that the review petition mentioned in prayer clause (a) of the

said notice of motion has been dismissed by the Supreme Court on 22<sup>nd</sup> January, 2013. He submits that the said prayer clause (a) thus has become infructuous. The learned trial Judge has already considered this aspect in detail in the impugned order. Insofar as prayer clause (b) in the notice of motion is concerned, learned counsel appearing for the original plaintiff states that even prayer clause (b) in the notice of motion, without going into the issue whether such declaration could have been sought in the notice of motion at all, the said prayer does not survive. In support of this submission, learned counsel invited my attention to the affidavit dated 31<sup>st</sup> July, 2013 filed by the appellant in the review petition before the Supreme Court thereby raising the issue about declaration of slum of the suit property under section 4(1) of the Maharashtra Slum and Clearance Areas Act, 1971. He submits that the Supreme Court while dismissing the said review petition on 22<sup>nd</sup> January, 2014 has clearly mentioned in the order that the Court had carefully gone through the review petition and the connected papers and found no reasons to interfere with the impugned order.

3. Learned counsel for the appellant on the other hand while dealing with the preliminary issue raised by Mr.Vaishnawa, learned counsel for the original plaintiffs submits that though such plea was raised before the Supreme Court in the affidavit filed before the Supreme Court, the Supreme Court has not considered the same and thus the trial Court ought to have considered the same independently in the notice of motion filed by the appellant.

4. It is submitted by learned counsel for the appellant that the original plaintiffs could not have executed the decree without any notice to the appellant herein.

5. Insofar as prayer clause (a) of the notice of motion is concerned, a perusal of the said prayer (a) indicates that the appellant had applied for stay of the execution proceedings in the notice of motion till the decision of the review petition bearing Review Petition (Civil) No.1435-1436 was disposed of by the Supreme Court. During the pendency of the said notice of motion, the Supreme Court has already dismissed the said review petition by an order dated 22<sup>nd</sup> January, 2014. Prayer (a), in my view had become infructuous when the notice of motion was heard by the learned trial Judge and thus the said issue is rightly rejected by the learned trial Judge.

6. Insofar as prayer clause (b) of the notice of motion is concerned, without going into the issue whether the trial Court could have granted such relief in terms of prayer clause (b) or not, a perusal of the affidavit filed by the appellant in the review petition before the Supreme Court clearly indicates that these additional grounds which were sought to be raised before the trial Court in the notice of motion were also raised in the said affidavit which was relied upon by the appellant before the Supreme Court in review petition. The Supreme Court has dismissed the review petition after perusing the review petition and the connected papers. Be that as it may, the fact remains that the review petition along with supporting papers in which these additional grounds were raised by the appellant has been rejected.

7. Mr.Vaishnawa, learned counsel for the original plaintiffs also invited my attention to the fact that the decree has been already executed by showing the report of the Court Receiver which clearly indicates that the impugned structures are already demolished and the decree passed by the trial Court has been already executed. In

my view, the learned trial Court has rightly rejected the notice of motion by recording a detailed reasons in the impugned order and has rightly imposed costs of Rs.20,000/- upon the appellant for pursuing the said notice of motion in spite of the fact that the same had become infructuous.

8. Learned counsel for the appellant continued to press this appeal though a preliminary objection was raised by the learned counsel for the original plaintiffs that both these prayers had become infructuous and in view of the fact that the decree itself is executed, nothing survived in the notice of motion. In my view, the appeal filed by the appellant is thoroughly misconceived and deserves to be dismissed with compensatory costs.

9. The appellant is directed to comply with the order of costs passed by the trial Court and also to pay a further costs of Rs.10,000/- to the original plaintiffs which amounts shall be paid within two weeks from today.

10. The appeal is dismissed with costs quantified at Rs.10,000/-.

**(R.D. DHANUKA, J.)**