

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8679 OF 2015

M/s. Supreme India Constructions.	]	... Petitioner/
Versus		Orig. Defendant
Abdul Haque Abdul Khalique Khan.	]	... Respondent/
		Orig. Plaintiff

Mr. Manoj M. Kadam i/b Mr. A. B. Ansari for Petitioner.
 Mr. S. M. Vyas for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- AUGUST 31, 2015

P. C. :-

1. This petition challenges orders dated 07/03/2015 and 01/08/2015 made by the Small Causes Court in Execution Application No.517 of 2014.

2. The Respondent, was constrained to take out Execution Application No.517 of 2014, since according to the Respondent, the Consent Decree based upon the Consent Terms dated 11/01/2010 has not been complied with by the Petitioner. By order dated 07/03/2015, the Executing Court has merely overruled the Petitioner's objection concerning limitation and by order dated 01/08/2015, the Executing Court has permitted the exhibition of documents at Sr.Nos.1 to 4 and 7 to 11.

3. The learned Counsel for Petitioner has submitted that the Consent Terms do not provide for payment of any compensation. In

fact, on the basis that the Respondent has waived of his right to claim compensation and/or rent during the interregnum of vacation of the suit premises and allotment of new premises, the Petitioner has agreed to provide certain additional area in the new premises. The learned Counsel for Petitioner further points out that the premises are ready but no possession can be delivered, as Occupancy Certificate is yet to be received from the Corporation. The learned Counsel submits that this being the position, there was no question of Executing Court taking the view that the prayer for compensation is within the prescribed period of limitation. Further, the learned Counsel for Petitioner submits that the documents, which, have been permitted to be executed, are irrelevant to the issue involved and hence the exhibition of the same is an exercise in excess of jurisdiction.

4. This petition is totally misconceived. The waiver of the compensation and/or rent was for the period during which the Respondent vacates the suit premises and is allotted the new premises. This is clear from clause 4 of the Consent Terms. There is no material to accept that the construction of the new premises is complete, particularly since no Occupancy Certificate has yet been issued. As per the Consent Terms, the possession of the new premises was to be delivered within a period of 30 months i.e. 24 months and grace period of 6 months. Admittedly, at least for reasons not attributable to the Respondent, such possession has not been delivered during the said period. Instead, objection was raised that the plea for compensation is barred by law of limitation. The impugned order

dated 07/03/2015 has merely overruled such objection and thereafter, directed the parties to lead evidence on the aspect of compensation. There is certainly no jurisdictional error in the making of the impugned order. In any case, the extraordinary jurisdiction cannot be exercised at the behest of the Petitioner who has failed to at least *prima facie* comply with the obligation undertaken by him under the Consent Terms and is thereafter resisting the plea for adjudication of compensation, *inter alia*, on the ground that the same is barred by some law of limitation.

5. On the aspect of exhibition of certain documents, this is really not the stage to decide whether the documents are relevant or not. The Trial Court has, at the stage of exhibiting the same, found the same to be *prima-facie* relevant. Ultimately, when the matter is argued finally, it will always be open to the Petitioner to urge that the documents are either irrelevant or that evidenciary value ought not to be attached to them. However, the impugned order is neither in excess of jurisdiction nor can it be said to have vitiated by perversity.

6. Accordingly, no case is made out to interfere with the impugned order. The Petition is dismissed with costs assessed at Rs.10,000/- (Rupees Ten Thousand Only). The Executing Court to ensure that such costs are paid by the Petitioner herein within a period of four weeks from today.

(M. S. SONAK, J.)