

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10721 OF 2015**

Kevalram Hinatji Prapati

..Petitioner

Vs.

**Chirasen Shivram Kalambe (deceased)
through LRs & Anr.**

..Respondents

Mr. Vilas Tapkir for the Petitioner

**CORAM : R. M. SAVANT, J.
DATE : 3rd DECEMBER, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-8-2015 passed by the Learned District Judge-22, Pune, by which order, the application Exhibit 5 filed by the Petitioner for temporary injunction came to be rejected.

2 The Petitioner is in possession of the suit premises which is the subject matter of Regular Civil Suit No.883 of 1990. In so far as the said Suit is concerned, it is required to be noted that the said Suit was decided exparte and a decree of eviction came to be passed against the Defendant i.e. the Respondent No.2 herein. The Respondent No.1 is the landlord i.e. the original Plaintiff who had filed the Suit in question. The Respondent No.2 herein i.e.

the Defendant to the said Regular Civil Suit No.883 of 1990 filed Misc Application No.243 of 1992 invoking Order IX Rule 13 of the Civil Procedure Code for setting aside the exparte decree passed in the said Suit. The said application came to be rejected by the Trial Court. The Respondent No.2 aggrieved by the rejection of the application carried the matter in Appeal being Misc Civil Appeal No.42 of 1993. The said Appeal was allowed by the Learned III Additional District Judge, Pune, by judgment and order dated 20-11-1999, resultantly the exparte judgment and order passed in the said Suit was set aside and an order was passed as regards the restitution of the suit premises to the Defendant i.e. the Respondent No.2 herein. The Respondent No.1/Plaintiff was accordingly directed to restore the possession of the suit premises to the Defendant i.e. the Respondent No.2 herein and on failure, the Defendant was granted the liberty to take steps for the possession of the suit premises. It is pursuant to the said judgment and order dated 20-11-1999, the Defendant filed an application for restoration of the suit premises by invoking Section 144 of the Civil Procedure Code. The said application was allowed and a possession warrant came to be issued against the original Plaintiff i.e. the Respondent No.1 herein. It is at the time of execution of the possession warrant that the Petitioner herein obstructed the same and claimed to be in settled possession of the suit premises since about 3 years. It was his case that he was carrying on business in the name and style of Maharaja Sales in the suit premises and that he could only be evicted by following the due process of law.

3 The Petitioner herein i.e. the third party filed an application Exhibit 112 before the Trial court for adding himself as a Defendant and for restraining the original Defendant from seeking possession of the suit premises. The said application Exhibit 112 was considered by the Trial Court. The Trial Court by its order dated 27-3-2015 rejected the said application and directed the Petitioner to hand over possession to the Respondent No.2. Significantly the said order passed by the Trial Court has not been challenged by the Respondent No.1/Plaintiff but has been challenged by the third party i.e. the Petitioner herein.

4 The Petitioner herein filed the instant Appeal being Regular Civil Appeal No.316 of 2015 challenging the order passed by the Trial Court dated 27-3-2015. In the instant Appeal, the Appellant i.e. the Petitioner herein filed an application Exhibit 5 for an injunction restraining the Defendant from taking possession of the suit premises. The Lower Appellate Court has by the impugned order dated 20-8-2015, has rejected the said application. The Lower Appellate Court has referred to the facts as afore stated wherein an order of restitution has already been passed in favour of the Defendant i.e. the Respondent No.2 herein. The Lower Appellate Court has also referred to the fact that the Plaintiff has not filed any proceeding challenging the order of restitution and it is the Appellant i.e. the Petitioner herein who has filed the

instant Appeal challenging the said order. The Lower Appellate Court has also taken into consideration the bailiff's report. According to the Lower Appellate Court, if the bailiff's report is read in its proper perspective, then it could not be said that the Appellant / Petitioner was in possession of the suit premises. The bailiff has reported to the Trial Court that when he visited the suit premises, he found it open. He found the nameplate of shop as Maharaja. It is further reported that he met the Appellant/Petitioner to whom he disclosed the purpose of his visit to the suit premises. It is further reported that the Appellant / Petitioner herein told the bailiff that the owner of the shop Bhavarlal Rajaji Chaudhary went to Rajasthan and that he would come back after 8 to 10 days. The Lower Appellate Court has also noted the fact that one Jyoti Kalambe, Namrata Kalambe, Sagar Kalambe and other gathered outside the shop i.e. the suit premises and said that they would not hand over possession of the suit premises to the Defendant. It is on account of the said fact that the possession warrant could not be executed. The Lower Appellate Court has therefore concluded that from the bailiff's report it is quiet clear that the Appellant / Petitioner herein nowhere claimed that he was in settled possession of the suit premises. The Lower Appellate Court has also rejected the application on the ground that once there is an order of restitution, then there cannot be any impediment to obstruct the restitution more so at the behest of a person who is a trespasser and who has trespassed in the premises pending the Suit.

5 In the light of the facts as afore stated, the concurrent orders of the Courts below rejecting the application for temporary injunction filed by the third party i.e. the Petitioner herein, cannot be found fault with. No case for interference is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]