

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (St.) NO. 32795 OF 2015
IN
APPEAL FROM ORDER (St.) NO. 27655 OF 2015

Zakir Ali Khan

... Applicant

Vs.

Sudhir Sitaram Raut & Ors.

... Respondents

Mr. Hemant S. Deshpande a/w. Mr. Y.K. Tiwari i/b. K.P. Tiwari & Co.,
Advocate for the applicant.

Mr. Sanjiv Punalekar a/w. Mr. Madhur Rai i/b. PRS Legal, Advocate for
respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 2nd December, 2015

P.C.:

1. Not on board. Upon mentioning, taken on board.
2. The applicant/appellant prays that the order dated 24th August, 2015 passed by District Judge-2, Raigad in Exhibit 65 in Special Darkhast No. 02 of 2014 be stayed and the Court receiver be directed to take symbolic possession of the attached properties and not the actual possession.
3. The learned counsel for the respondents submitted that respondent no. 5 -Alhana Agritech Pvt. Ltd. has taken loan from Abhyudaya Cooperative Bank and as that loan was not paid, the Bank initiated some proceedings and the matter was referred to the Arbitrator. The arbitral award was passed and execution proceedings was filed. In the execution

proceedings, respondent nos. 1 and 2, who repaid the amount, were substituted in place of the bank and thus, as on today, respondent nos. 1 and 2 are the decree holders.

4. The learned counsel for the applicant has submitted that in the said Darkhast proceedings, the Executing Court has passed the order of appointment of Court receiver below Exhibit 43. The Court receiver was authorized to take necessary steps taking symbolic as well as physical possession of the attached properties. The said order was challenged before the High Court and was confirmed. Pursuant to that, the Court receiver was appointed and thereafter the Court receiver made an application to Darkhast Court for police protection, as he is going to take physical possession of the attached properties on 3rd December, 2015. The learned counsel pointed out a letter written by the Court receiver which is at page nos. 8 and 9 of this Application. It is also pointed out that the Tahsildar is requested to remain present at the suit site for the purpose of identifying the attached properties to enable him to take physical possession. The learned counsel on the basis of this letter has moved this Application. He further pointed out that on the application by the Court receiver, the present applicant has appeared and opposed it, as he has apprehension that his property is not the attached property and is a separate property, therefore, the Court receiver should not take

possession of his property.

5. While hearing his objections at the time of deciding the Application for giving police protection to the Court receiver, the learned Judge by an order dated 24th October, 2015 has observed in paragraph 11 that from the scrutiny of the attached properties, it is found that the attached properties and the property of the applicant are separate and independent, therefore, there is no difficulty for the Court receiver to take the police protection and carry on his work of measurement and taking physical or symbolic possession.

6. The learned counsel for the respondents/decreed holders has submitted that the applicant has appeared before the Executing Court and they were given an opportunity of audience. His apprehension is premature and it is rightly observed by the learned Executing Judge while allowing Exhibit 65 filed by the Court Receiver.

7. After going through the orders passed by the Executing Court so also considering the facts which are placed before the Court by the learned counsel for both the sides, it appears that the property of the applicant and the properties which are attached are separate and independent properties and in view of this, Application is dismissed with

following clarification:

- (i) The Court receiver to carry on his work tomorrow as per the fixed programme, however, the Court receiver shall not take possession of the property which is identified by the applicant as his property;
- (ii) The Court receiver may take the possession of all the attached properties which are subject matter of the arbitral award. If the attached properties subject matter of the arbitral award and the property which is identified by the applicant as his owned property are overlapping and there is a confusion in respect of boundaries of these two properties, then the Court receiver shall measure the area of the disputed portion and shall submit the report to that effect to the Executing Court.
- (iii) No obstruction shall be caused in the Court receiver's work.

8. Civil Application is disposed of.

(MRIDULA BHATKAR, J.)