

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 136 OF 2015
Mr. Victor Ronald D'Cunha .. Applicant
vs.
Maria Philomena Pereira & anr. .. Respondents

Mr. Nigel Qureshi i/b Mr. G.C. Mendonca for the Applicant.
Mr. Shaun Pinto for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 15 April, 2015.

P.C. :-

1] This revision application challenges the order dated 5 November 2014 made by the City Civil Court, Greater Bombay dismissing the applicant's Chamber Summons No.2203 of 2014 objecting to Execution Application No. 283 of 2013 in Suit No. 3230 of 1989.

2] The learned counsel for the applicant points out that the decree in the present suit concerns Flat No.11 on 1st Floor, Mary Apartments, Eksar Taluka, Borivali bearing CTS No. 1108 and Survey No.153 and Hissa No.10. The warrant of possession dated 6 May 2014 also makes reference to such Flat No.11. However, the Bailiff of the Court affixed such warrant of possession upon the applicant's premises being 101, 1st Floor, Mary Apartments, Eksar Taluka, Borivali, Mumbai. The learned counsel for the applicant, in the aforesaid circumstances, submitted that the warrant of possession has been affixed upon the premises which do not form the subject matter of the decree in execution and therefore, the Chamber Summons taken out by the applicant, ought to have been made absolute.

3] Having heard the learned counsel for the parties and perused the record, it does appear that the applicant is trying to take some undue advantage from out of possibly a ministerial error. The Mary Apartments has three flats on the first floor, which are stated to be numbered as 101,102 and 103. There is no dispute that the decree applies to the first floor of the building Mary Apartments. In these circumstances, it was not open to the applicant to seek to take some advantage of ministerial error and object to the execution. The learned City Civil Court, has rightly appreciated the position and dismissed the Chamber Summons. There is no reason to interfere with the impugned order.

4] The learned counsel for the applicant further submitted that the applicant has certain independent rights in respect of the suit flat, which forms the subject matter of decree under execution. If this be so, then it is for the applicant to take out appropriate proceedings under Order 21 Rule 99 of the Code of Civil procedure, 1908 (CPC). Similarly, learned counsel for respondent No.1, i.e., decree holder, is right in his submission that even the decree holder, if faced with any obstructions, is entitled to take out appropriate proceedings under Order 21 Rule 97 of the CPC.

5] In the aforesaid circumstances, although the impugned order is not being interfered with, liberty is granted to both the applicant as well as respondent No.1 to take out appropriate applications/chamber summons before the Executing Court and the Executing Court to decide the same in accordance with law and on their own merits.

6] Further, in order to enable the parties to do so, the execution proceedings, to remain stayed for a period of four weeks from today.

7] It is clarified that this Court has not expressed any opinion with regard to the respective claims of the parties, save and except on the issue of identity of the suit flat.

8] Accordingly, Civil Revision Application is disposed of in aforesaid terms. There shall be, however, no order as to costs.

(M. S. SONAK, J.)

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