

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 18 OF 2016

Smt. Dwarkabai Rajendra Murumkar
 Age 53 years, Occ. Household,
 R/o Shivaji Road, Ward No.3,
 Deshpande Chal, Shrirampur,
 Tq. Shrirampur, Dist. Ahmednagar. ... Petitioner

Vs.

1. Laxmikant Keshav Deshpande
 Age 53, years, Occu. Business,
 R/o Shivaji Road, Ward No.3,
 Shrirampur, Tq. Shrirampur,
 Dist. Ahmednagar.
2. Sau. Sunanda @ Nandini Dilip Joshi
 Age 62, years, Occu. Service,
 R/o Shivaji Road, Ward No.3,
 Shrirampur, Tq. Shrirampur,
 Dist. Ahmednagar. ... Respondents

 Mr. R.R. Karpe, Advocate for the petitioner.
 Mrs. Suvarna Zaware, Advocate for the respondents.

CORAM : SUNIL P. DESHMUKH, J.
DATE : 23-06-2016.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. The petitioner who is judgment-debtor in Regular Darkhast No. 109 of 2014 is before this court aggrieved by the order dated 27-11-2015, whereunder application exhibit-21 filed by

present respondent-decree holder has been allowed.

3. Learned counsel for the petitioner Mr. R.R. Karpe, vehemently submits that petitioner could not vacate premises in terms of compromise for the reason since litigation is going on in respect of other tenants and so long as that litigation is not over and those tenants would not vacate the tenanted property, as such, the construction would not be started by respondent as per terms of compromise. It is difficult to abide by the terms of starting construction and in the process, the terms of the compromise decree are unlikely to be fructify.

4. On the other hand, learned counsel for the respondent-landlord submits that looking at the physical location of the property which is occupied by the petitioner, despite the permission for construction having been sought and its renewal having been given, the respondent-landlord is not in a position to start construction activity. It is but for occupation by petitioner and non-adherence of the terms of compromise lot of hardship and difficulties are being caused in starting the construction.

5. Learned counsel further goes on to submit that the litigation referred to by learned counsel for petitioner is with regard to small portion at the extreme western end of the land owned by

respondent-landlord. She further submits that the construction in the circumstances, can be started and can also be completed to a substantial extent and, as a matter of fact, in case the construction is allowed to be carried on, the petitioner herself would stand benefited for she would have early chance of re-occupying the newly constructed premises pursuant to the compromise terms. Pendency of litigation of other tenants would not hamper construction over substantial area of property and construction could be arranged for accordingly.

6. Having heard the parties and upon perusal of the impugned order whereunder, learned judge has taken stock of the situation along with citations which were relied on behalf of the petitioner, the impugned order does not appear to be an untenable order. Having regard to the submissions on behalf of the landlord, it appears to be expedient and in the interest of petitioner herself to let the construction begin at the earliest. As such, I am not inclined to interfere with the order.

7. Writ petition stands dismissed. Rule discharged.

(SUNIL P. DESHMUKH)
JUDGE