

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

WRIT PETITION NO. 705 OF 2014

Mr. Ramanth Pai,
S/Olate Narayan Pai,
Major in age,
R/o. Pai Building,
Behind Uma Petrol Pump,
Mundevel, Vasco Da Gama Goa. Petitioner

Vs.

Khilji and Khureshi Builders,
Partnership firm duly constituted
Under the Provisions of Indian
Partnership Act 1932,
Having its office at B/6,
First Floor, Dr. Kossambe Building,
Swantantra Path,
Vasco da Gama Goa,
Represented by its partnership
Shri Gulam Rasool Khilji,
Major in age, r/o. "Khilji Ashiyana',
Airport Road,
Chicalim Goa – 403 711. Respondent

Mr. S. S. Kantak, Senior Advocate with Adv. P.
Talaulikar for the Petitioner.

Mr. A. D. Bhole, Advocate for the Respondents.

**CORAM: C. V. BHADANG, J.
RESERVED ON 20TH JUNE, 2016.
PRONOUNCED ON: 30th JUNE, 2016.**

ORDER:

By this petition, the petitioner/judgment debtor is challenging the order dated 3/11/2014 passed by the learned Civil Judge Senior Division Vasco-da-Gama in Regular Execution Application No.46/2010/B.

2. The brief facts are that the respondent/Decree holder is a builder. The petitioner had agreed to purchase a flat from the respondent. However, disputes arose between the parties. The respondent filed a suit against the petitioner under section 6 of the Specific Relief Act on the allegation that the petitioner had forcibly taken possession of the said flat. The said civil suit was dismissed by the learned Trial Court. However, this Court while allowing the civil revision application no.23/2009 by judgment

and order dated 11/6/2010 had decreed the suit, thereby directing the petitioner to hand over the possession of the suit flat to the respondent. This was unsuccessfully challenged by the petitioner before the Hon'ble Supreme Court in Special Leave petition no.21212/2010, which was dismissed as withdrawn on 9/8/2010.

3. The respondent filed Execution application for execution of the said decree in which the petitioner raised an objection. It was contended that under section 6 of the Specific Relief Act two conditions have to be satisfied. It is to be shown that firstly the owner had put a person in possession of his property and secondly he should have dispossessed him of the same, without following the procedure established by law. This contention was not accepted by the Executing Court which held that mere dispossession is sufficient. In that view of the matter the Executing Court has rejected the application/objection filed by the

petitioner, which order is the subject matter of challenge in this petition.

4. I have heard Shri Kantak the learned Senior Counsel for the petitioner and Shri Bhobe, the learned counsel appearing for the respondent.

5. It is submitted by Shri Kantak, the learned Senior Counsel for the petitioner that under section 6 of the Specific Relief Act the dispossessor must have a right to recover possession lawfully on the basis of title. He submits that in the present case the suit filed under section 6 of the Special Relief Act was not maintainable.

6. The learned counsel for the respondent supports the impugned order. It is submitted that the petitioner having failed all along and the decree having attained finality cannot now contend that the suit under section 6 of the Specific Relief Act was not maintainable.

7. I have considered the circumstances and the submissions made. Section 6 of the Specific Relief Act reads thus :

Suit by person dispossessed of immovable property-

(1) if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall

bar any person from suit to establish his title to such property and to recover possession thereof.”

8. It can thus be seen that any person who is dispossessed without his consent of immovable property, otherwise than in due course of law, within six months, before the filing of the suit, can recover possession notwithstanding any other title that may be set up in that suit. Any such decision in the suit under section 6 of the Act is subject to the remedy of the aggrieved person to establish his title to such property and to recover possession thereof. The object of section 6 of the Act is to ensure that the parties do not take law into their own hands while obtaining possession. It is now well settled that even a trespasser in settled possession is entitled to protect his possession until evicted in due course of law. Thus the submission on behalf of the petitioner cannot be accepted. More so, when the judgment and decree has attained finality. It is obvious that the Executing Court

cannot go behind the decree. For these reasons, I do not find that the impugned order exhibits any jurisdictional error so as to require interference. The writ petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

Ap/-