

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3336 OF 2016

Sudhakar Sadashiv Sawant ... Petitioner
Vs.
Anita Anant Sawant through POA Anant
Shivram Sawant ... Respondent

Mr. Anant Garde a/w. Mr. Mohan B. Jadhav for Petitioner.
Mr. Sandeep S. Dhuri for Respondent.

CORAM : R. G. KETKAR, J.
DATE : MARCH 21, 2016

P.C. :

Heard Mr. Garde, learned Counsel for petitioner and Mr. Dhuri, learned Counsel for respondent at length

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 25.02.2016 passed by the learned Civil Judge, Junior Division, Shriwardhan below exhibit-221 in Regular Darkhast No.8 of 2006. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as judgment-debtor, raising question over inclusion of “Oti” ओटी in the possession warrant issued at exhibit-219 issued by the Court.

3. Mr. Garde argued the Petition for quite some time. He states that judgment-debtor Sudhakar Sadashiv Sawant is present in the Court. Upon taking instructions from him, Mr. Garde states that within 2 months from today, judgment-debtor will handover possession of the suit premises described in paragraphs 1 and 2 of the plaint, which includes Oti to the decree-holder. He further assures that the judgment-debtor will not apply for extension of time for handing over possession.

He further submits that remedies that may be available to the judgment-debtor for recovery of possession of Oti may be kept open. He assures that during the course of the day, judgment-debtor (petitioner herein) will file undertaking incorporating therein that,

- a. He is in possession of the suit premises described in paragraphs 1 and 2 of the plaint, which includes Oti and nobody else is in possession;
- b. He has so far neither created third party interest nor parted with possession of the suit premises described in paragraphs 1 and 2 of the plaint, which includes Oti;
- c. He will hereafter neither create third party interest nor part with possession of the suit premises described in paragraphs 1 and 2 of the plaint, which includes Oti;
- d. He will handover vacant and peaceful possession of the suit premises described in paragraphs 1 and 2 of the plaint including Oti to the decree-holder within two months from today and that he will not ask further extension of time for handing over possession.

4. Mr. Garde has tendered undertaking, which is taken on record and marked 'X' for identification. Undertaking is accepted.

5. In view thereof, Petition is disposed of as not pressed. Petitioner is given two months time to handover possession of the suit premises, more particularly described in paragraphs 1 and 2 of the plaint, including Oti. Remedies that may be available to the petitioner for recovery of Oti on the ground that the same is not subject matter of the Suit are expressly kept open. Petition is disposed of in the aforesaid terms.

(R. G. KETKAR, J.)