

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 3550 OF 2015

Smt.Kalpana Vyankat Kadam & anr. .. Petitioners.

Vs.

Vasantrao Raghunath Kadam. .. Respondent

Mr.C.P.Yadav, for Petitioners.

Mr.Kalpesh Patil, for the Respondent.

***CORAM : N.M.Jamdar, J.
Thursday, 22 September 2016.***

P.C. :

This is a case where there is sheer abuse of process of law by the judgment debtor.

2. The Respondent- decree holder filed a suit for removal of encroachment on 21 March 1989. The suit was initially decreed by the learned Civil Judge, Karad. An appeal was filed by the Petitioners in the District Court wherein the proceedings were remanded back. Upon remand the learned Civil Judge appointed a Commissioner. Map of the Commissioner was placed on record demarcating the encroachment and the suit was decreed on 3 April 2012. Thereafter the Petitioners filed first appeal in the District Court at Karad. Ample opportunities were given to the Petitioners to remove office objections. Yet the office objections in appeal were

not removed and the appeal was dismissed for non-prosecution. Thereafter an application for restoration of the appeal was made which was also rejected by the learned District Judge. This order was not challenged by the Petitioners. The Petitioners filed another appeal in the district court. Since there was delay in appeal, an application for condonation of delay was preferred. The Petitioners thereafter also sought stay of the execution of the Darkhast proceedings, which is rejected by the learned District Judge by the impugned order.

3. The learned counsel for the Petitioners submitted that the Petitioners be given opportunity till the application for condonation of delay is heard and the darkhast proceedings be stayed. The request is strongly opposed by the learned counsel for the Respondent. The learned District Judge examined the conduct of the Petitioners. In spite of the dismissal of the application for restoration neither further proceedings were taken but it took two months for the Petitioners to file another appeal with condonation of delay. There is absolutely no explanation for this conduct. Once there was a decree passed against the Petitioners, in the appeal that was filed, considering the urgency, the office objections should have been removed. Perusal of the record shows that ample opportunities were given to the Petitioners to remove these objections. Yet the Petitioners allowed the appeal to be dismissed. The Petitioners did not choose to challenge the refusal of restoration. Thereafter second

appeal is filed with unexplained delay. It is clear that the only intention of the Petitioners is to somehow stall the execution of the decree. Suit is filed in the year 1989. Such tactics at the hands of the judgment debtors must be deprecated and cannot be encouraged. The Apex Court has repeatedly warned the courts to be on guard to curb abuses by the judgment debtors. As stated above, this is one such example. No interference in the equity jurisdiction of this Court is warranted.

4. The Writ Petition is rejected.

(N.M.Jamdar, J.)