

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.10604 OF 2016

Dattu Bhairu Kanse and another	...	Petitioners
Vs.		
Vitthal Dadu Kanse and others	...	Respondents

Mr. D. D. Rananaware for Petitioners.

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

P.C. :

Not on Board. At the request of Mr. Rananaware, learned Counsel for petitioners, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 15.02.2016 passed by the learned 2nd Joint Civil Judge, Senior Division, Satara in Miscellaneous Application No.54 of 2014. By that order, the learned trial Judge allowed the application subject to costs of Rs.1,000/- payable to the opponents and restored the Execution Petition No.219 of 2004.

3. Respondents, hereinafter referred to as 'decree-holders', have instituted Suit against the petitioners, hereinafter referred to as 'judgment-debtors', for possession of the suit premises. Suit was decreed on 15.07.1996. Judgment debtors preferred appeal, which was dismissed on 24.10.2002. Decree-holder filed Execution Petition No.219 of 2004 for executing the decree. Pending that proceedings, they also filed application exhibit-43 for police aid at the time of execution of the possession warrant. That application was allowed on 27.01.2006. As decree-holder did not deposit the amount of police aid, the Execution Petition was dismissed on 17.07.2014. Decree-holder

filed application on 13.08.2014 for restoration. By the impugned order, the learned trial Judge has restored the Execution Petition. It is against this order, the judgment-debtors have preferred this Petition.

4. In support of this Petition, Mr. Rananaware submitted that decree-holder contended that he is a farm labourer. He invited my attention to paragraph 6 of the reply and contended that decree-holder is in possession of 3-4 acres land where he is taking sugarcane crop. In short, judgment-debtors disputed that decree-holder is a farm labourer and that his financial condition is poor. He submitted that this aspect is not considered by the learned trial Judge. Apart from that, there is no material to substantiate the grounds set up by the decree-holder that he was suffering from ailment. Mr. Rananaware also invited my attention to the application dated 26.06.2012 made by the decree-holder at exhibit-43 that he expressed his willingness to pay the charges required for police aid. He submitted that despite that, till 17.07.2014, decree-holder did not deposit the amount.

5. I have considered the submissions advanced by Mr. Rananaware. I have also perused the material on record. As noted earlier, Suit filed by the decree-holder was decreed. Appeal preferred by the judgment-debtors was dismissed. Decree-holder filed Darkhast in the year 2004. He also filed application for police aid for executing possession warrant, which was allowed on 27.01.2006. Mr. Rananaware submitted that no steps were taken by the decree-holder thereafter and he did not even deposit the amount of police aid. The very fact that decree-holder was not in a position to deposit the amount of police aid for executing possession warrant, itself shows that his financial condition is not sound. Otherwise, there was no reason for not depositing the amount for executing the decree, which was admittedly in favour of the decree-holder. That apart, Execution Petition was dismissed on 17.07.2014 and

the restoration application was filed on 13.08.2014, which was within the period of 30 days from the date of dismissal of the Execution Petition.

6. In view thereof and for the reasons recorded in paragraphs 7 and 9 of the impugned order, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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