

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

WRIT PETITION NO. 4506 OF 2014

Mr. Dasharath Keshav Waigankar

.... Petitioner

Versus

Mr. Mahipati Ganpati Tele & Ors.

.... Respondents

Mr. Madhav Jamdar for Petitioner.

N.N.Gawankar a/w Manas Gawankar for Respondent No.1.

***CORAM : N. M. Jamdar J.
Wednesday 5 October 2016***

ORAL ORDER

. The petitioner has challenged the order passed on 9 March, 2006 in Civil Suit No. 122 of 2001 and also sought for stay to the execution of the decree.

2. The respondent no.1 filed a suit under Section 6 of the Specific Relief Act. It is the case of the respondent no.1 that he was working as a lecturer at Topiwala Junior College, Malvan. He had taken premises from the petitioner on rental basis and he was in possession of the said premises. On 2 March, 2001, the respondent no.1 was forcibly dispossessed from the suit property by the

petitioner and his henchmen. Accordingly he sought possession of the suit premises under Section 6 of the Specific Relief Act. It was the case of the petitioner that the respondent no.1 had agreed to vacate the premises and he willingly handed over the possession of the suit premises to the petitioner. The learned Civil Judge upon consideration of the evidence, came to the conclusion that respondent no.1 was wrongfully dispossessed and decreed the suit by Judgment and order dated 9 March 2006. Darkhast proceedings were instituted by the respondents which were objected to and the objection was rejected by the learned Civil Judge Junior Division, Malvan by order dated 9 July, 2008. Initially, Civil Revision Application No. 535 of 2008 was filed challenging the order dated 9 July 2008. It was pointed out that the present petition is already filed. The Civil Revision Application was disposed of. The petition was initially dismissed for non-removal of office objection and thereafter it was restored.

3. Heard learned Counsel for the parties.

4. The learned Counsel for the petitioner firstly submitted that the suit is not filed under section 6 of the Specific Relief Act. The submission cannot be accepted. The perusal of the plaint clearly demonstrate that necessary averments of being in possession and wrongfully dispossession and consequent order of restoration of

possession, have been pleaded and sought. In the plaint, respondents have clearly invoked the provisions under Section 6 of the Specific Relief Act. It was then contended that the suit is not within limitation as the cause of action is shown as of 2 March 2001 and the suit is filed on 3 September 2001. The learned Civil Judge has taken note of the fact that 1 September and 2 September were holidays and therefore the learned Civil Judge rightly held that the suit is within limitation on merits.

5. On merits, the learned Counsel for the petitioner submitted that the respondent no.1 did not point out that he had agreed to handover the possession of the suit premises on 28 February 2001 by executing a document on 13 December 2000 and therefore adverse inference should have been drawn. However, if this was the document which was relied by the petitioner, nothing stopped the petitioner from producing the same. Admitted position is that the document was not produced and only a case was put to the respondent no.1 in the cross-examination.

6. In any case, if the document dated 13 December 2000 is seen, it is a carefully drafted agreement which is signed by four witnesses. Therefore, while executing such document, the petitioner has taken all the care of examining four witnesses and also stating that the agreement is not executed under duress. Therefore, it is

clear that the petitioner has taken all these care in view of the strained relations between the parties. Therefore, once this document existed, it was expected that at the time of handing over of possession also there would be equal care taken by the petitioner. There is no such possession receipt executed. According to the respondent, it is correct that he did not vacate on 28 February, 2001 but he was forcibly dispossessed thereafter.

7. The learned Civil Judge has accepted the version of the respondent no.1, by considering the probabilities that no written possession receipt was executed and it is not possible to believe that the respondent no.1 will simply handed over the possession. The learned Civil Judge is entitled to take such view on appreciation of evidence. Merely because the evidence is read and another conclusion is reached, is no ground to interfere with the impugned order. It cannot be said that in absence of any possession receipt, the finding of fact recorded by the learned Civil Judge was impossible. The legislature has not provided an appeal against the order passed under Section 6 of the Specific Relief Act. The section has been enacted to ensure maintenance of rule of law. This aspect has been emphasized by the Apex Court in the case of S. R. Ejaz ..Versus.. T.N.Handloom Weavers' Cooperative Society Ltd., (2002) 3 Supreme Court Cases 137.

8. From the facts of the case, it is clear that the respondents have taken law in their own hands and have simply dispossessed the petitioner. If the respondent had over stayed in the suit premises, petitioners ought to have taken recourse as per the law established. The learned Counsel for the respondents points out that criminal proceedings were also instituted by the respondents against the petitioner and other persons for trasspass, theft etc. arising from the same incident. It is informed that the petitioner and the other persons have been convicted and the appeal is pending.

9. There is no error in the order dated 28 March 2006. The consequent order directing execution and rejecting the objection of the petitioner also cannot be interfered with. The Writ Petition therefore cannot be entertained and is accordingly rejected.

10. At this stage, the learned Counsel for the petitioner seeks stay to the execution of the proceeding. An order under Section 6 of the Specific Relief Act is passed ten years back. The Court has directed the petitioner to put the respondent no.1 in possession. The petitioners have nullified the object of legislature in providing a speedy remedy. Therefore, I am not inclined to extend the ad-interim order. The learned Counsel for the respondents submits that in any case even if Darkhast proceeding is instituted, it

will take three to four weeks, because notices will have to be issued and procedure will have to be followed. In view of the statement, no need to extend the ad-interim order.

(N. M. Jamdar, J.)