

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

WRIT PETITION NO. 6191 OF 2016

Mr. Santosh Ganpat Panchal	.. Petitioner.
Vs.	
Mr. Trilokinath Hublal Sharma & Ors.	.. Respondents.

...

Mr. Shivaji Kurup i/b Shivaji Kurup & Co. for Petitioner.
Mr. M.J. Sharma for Respondents.

***CORAM : N. M. Jamdar, J.
Date : 14 December 2016.***

ORAL ORDER:

By this petition, the petitioner has challenged the judgment and order dated 22nd April, 2016 passed by the Appellate Bench of the Small Causes Court, Mumbai and the order dated 14th January, 2016 passed by the Small Causes Court, Mumbai below Exh,1 in Execution Application No. 86/2013. The petitioner is the original defendant who has sought to resist the execution of the decree on the ground that the decree executed was a nullity, which argument has been negated by both the Court.

2. The respondent-landlord instituted a suit bearing R.A.E & R Suit No.3298/1989 which was filed in the year 1989. The suit was decreed on 16th March, 2006. Against the order of the Small Causes Court dated 16th March, 2006, the petitioner filed an appeal before the Appellate Bench and sought condonation of delay of

1359 days. The Appellate Bench refused to condone the delay of 1359 days. Writ Petition No.12000/2013 which was filed in this Court was dismissed on 31st August, 2015. The learned Single Judge found that there was no reason for condonation of delay of 1359 days. At that time, the petitioner raised an argument that the decree itself was a nullity since the permission from the competent authority was not obtained. The learned Single Judge observed what was being considered by the exercise of discretion by the Appellate Bench or otherwise and the aspect of nullity was not gone into. Thereafter, the petitioner advanced the contention that the decree was a nullity before the Executing Court.

3. It is the contention of the learned counsel for the petitioner that when the suit was instituted in the year 1989, the notification dated 3rd October, 1985, notifying the area as slum was in force and, therefore, the suit could not have been instituted and subsequently the decree passed was a nullity. The learned counsel for the respondents on the other hand, points out that the notification was set aside twice and, in any case, it was set aside on 7th July, 2015 during the pendency of the suit and, therefore, there is no error in the view taken by both the Court.

4. In the case of **Hari S. Yadav V/s. Hiralal Prabhu Yadav** (Writ Petition No.1944/2002), an identical issue arose before the learned Single Judge of this Court for consideration. In that case during the pendency of the suit a notification under the the Maharashtra Slum Areas (Improvement, Clearance and

Redevelopment) Act, 1971 was set aside. An argument was advanced during the execution proceedings that the decree was a nullity. Before the learned Single Judge, it was argued that there were divergent views taken by the learned Single Judges of this Court on this point and a reference to a larger Bench was required. The learned Single Judge found that there were no such divergent views and categorically held that once a notification is set aside and the proceedings are pending, the restriction on the person to institute the suit without permission no longer exists. It was held that Section 22 of the Act of 1999 does not contemplate ouster of the Civil Court per se and only casts an embargo on the person from institution of a suit without the permission of the Competent Authority. The learned counsel for the petitioner has sought to rely upon the decision of the Apex Court in the **Laxmi Ram Pawar V/s. Sitabai Balu Dhotre and another, reported in 2011(2) Mah. L.J. 597** to contend that prior permission before institution of the suit is absolutely necessary. In this case before the Apex Court the suit was instituted against a trespasser without the permission of the Competent Authority. It was contended that in the case of a trespasser such permission from the Competent Authority is not required. The Apex Court, in the said context, examined the definition of “occupier” and held that even a trespasser must be evicted after following the due process and, therefore, even for instituting a suit against the trespasser, Section 22 of the Act, 1999 needs to be followed. The Apex Court did not consider the law as to what is the effect of subsequent setting aside of the

notification, which factual position has been considered by the Learned Single Judge in the case of **Hari S. Yadav V/s Hiralal Prabhu Yadav** (supra).

5. There is one more reason why the interference in the Writ Petition is not required and the power of superintendence need not required to be exercised. The petitioner has invoked the equity jurisdiction. In the present case, the petitioner who is a defendant contested the suit. Pending the suit, the notification was quashed and the decree was passed. The petitioner thereafter sought to move the Appellate Bench after a period of 1359 days without any reason. After that attempt failed, he filed a writ petition and argument was advanced that the decree is a nullity. This conduct is a complete abuse of the process of law. The Apex Court in various decisions has deprecated such conduct on the part of the judgment debtors to some how delay the execution of the decree. The suit was instituted in the year 1989. It is clear that the only attempt of the petitioner is to somehow see that the decree is not been executed. Therefore, this is one more ground no indulgence can be extended in favour of the petitioner. The writ petition is, accordingly, rejected.

6. The learned counsel for the petitioner at this stage seeks continuation of the ad-interim order. Since some time will be taken to obtain the copy of the order, the ad-interim order is continued for period of six weeks' time from today. This extension

is granted on the condition that the petitioner will file an undertaking/affidavit in this Court within two weeks stating the number of members in his family staying with him in the premises and that he will not create any third party interest or part with possession. If such an affidavit is not filed within a period of two weeks, the decree shall be executed forthwith.

(N. M. Jamdar, J.)