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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8577 OF 2016

Goldie Sud ..Petitioner.

V/s.

State of Maharashtra and Ors. ..Respondents.

Mr.A.G.Damle, Senior Advocate i/b. Mr.Trevor Pereira for the petitioner.

Ms.Vaishali Nimabalkar, AGP for respondent No.1.

CORAM : N.M. JAMDAR, J.

DATED : 6TH DECEMBER, 2016

ORAL ORDER

Heard the learned Senior Advocate for the Petitioner. The Petitioner has questioned the manner in which the decree passed in R.A.D. Suit No.264/2013 by the Small Cause Court, Bandra, Mumbai was executed in Marji application No.306/2013 and the report of the Bailiff dated 27 November 2013. The learned Counsel submitted that Respondent No.3 instituted R.A.D. Suit No.264/2013 on 26 April 2013 in respect of the property described in the plaint. He submitted that the Petitioner has nothing to do with the property described in the plaint, however, a

Marji Application was moved and Bailiff had taken possession of the property of the Petitioner by taking assistance of the Police force. The learned Counsel made a serious grievance about the manner in which the possession has been taken.

2. According to the petitioner, he has no connection with the suit property and the possession of the property has been incorrectly sought to be executed under garb of decree passed in R.A.D. Suit No.264/2013. The report of the Bailiff which is placed on record indicates that that execution is pursuant to the Marji application No. 306/2013. Whether the suit property which is the subject matter of R.A.D Suit No.264/2013 and the one taken in possession of pursuant to the Bailiff report are different or they are one and the same will require a factual inquiry. It is not possible, in a proceeding under Article 227 of the Constitution of India, to hold an inquiry at the first instance to ascertain this position of fact. Therefore, if it is the case of the petitioner that the decree passed in R.A.D. Suit No.264/2013 has been incorrectly executed and instead the property of the petitioner is being taken possession of, it will be appropriate that the petitioner approaches the learned Small Cause Court with a necessary application to bring to the notice of the learned Small Cause Court Judge the grievance made by the petitioner which is narrated in this petition. The executing Court has the power and responsibility to ensure that the decree passed by it is properly executed and possession of the correct property is handed over. If such application is made by the petitioner before the learned Small Cause Court Judge, the Small

Cause Court judge will take up the application with utmost expeditiousness and make an endeavour to decide the same as early as possible, as if the grievance made by the petitioner is correct, then it is a serious matter and an abuse of process of law. With this liberty, the writ petition is disposed of.

(N.M. JAMDAR, J.)