

the Co-operative Court passed eviction decree against the petitioner in respect of Flat No. B2, Jawaharabad. Almeda Road, Bandra, Mumbai – 400 050. That decree was challenged upto Supreme Court. The Supreme Court rejected SLP. Thereafter, the petitioner preferred Notice of Motion No. 374 of 2016. Thereafter, the petitioner preferred one more notice of motion in March 2016 for following reliefs.

“a) This Hon'ble Court be pleased to record the obstruction to the execution of the decree dated 16.12.2006, passed by the Ld.Maharashtra State Appellate Court, Mumbai in Appeal No. 43/20014.

b) That after recording the obstruction, this Hon'ble Court be pleased to allow the Applicant/original disputant no.3 to lead evidence to the obstruction of the decree.

c) That this Hon'ble Court be pleased to stay the execution of the decree dated 16.12.2006.

d) For such further and other reliefs as this Hon'ble Court may deem fit and proper.”

4 The Trial Court refused to grant leave to register the said Notice of Motion on the basis of earlier order dated 18.02.2016 in Notice of Motion No. 374 of 2016. Hence, the present Writ Petition.

5 The learned Counsel for the petitioner submits that petitioner has good chance of success in the present proceeding. He submits that it remains on the part of petitioner's Advocate to place on record the proper facts before this Court as well as the Apex Court. He further submits that the Appeal preferred by the petitioner against the eviction decree passed by the Trial Court is also pending for hearing and disposal on its own merits. He submits that if the stay is not granted the respondent plaintiff may evict petitioner from the suit premises then nothing will survive. In support of his contentions, he relied on

the Judgment of the High Court in the matter of *Abdulhussein Noorooddin Kagajwalla & Anr V/s. M/s. Maharashtra Industries & Another, 1997(2) Bom. C.R. 246*. On the basis of these submissions, the learned Counsel for the petitioner submits that in the interest of justice, this Hon'ble Court be pleased to restrain the respondent from taking any coercive steps for eviction from the suit premises.

6 I have heard learned Counsel for the petitioner at length. It is to be noted that in the present proceeding, the co-operative court passed Award/Decree of eviction against the petitioner. The same was confirmed by the Appellate Court/High Court as well as Apex Court. Thereafter, the respondent filed execution application. In that Execution Application, the petitioner preferred Notice of Motion No. 374 of 2016. That Notice of Motion was rejected by Bombay City Civil Court at Bombay by order dated 18.02.2016. Again, the petitioner preferred the present Notice of Motion in March 2016 for identical relief.

7 It is to be noted that in execution proceeding the Court cannot go beyond the decree. In the present proceeding, the award passed by the Co-operative Court was confirmed by the Supreme Court. The authority relied by the petitioner in the matter of Abdulhussein Noorooddin Kagajwalla (supra) is not applicable to the facts and circumstances of the present case. In that case the Court held that the jurisdiction of the Trial Court can be challenged in executing proceeding. That is not facts of the present case. In the present case, the decree is already confirmed by the Supreme Court and thereafter, the Notice of Motion preferred by the petitioner is required to be

rejected.

9 Considering these facts, I do not find any substance in the present Writ Petition.

10 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)