

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.444 OF 2016

Rakesh Kumar Ramay Sharma	..Applicant
<i>Versus</i>	
Abdul Kader Abdul Karim and others	..Respondents

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Mr.A. R. Pandey for the Applicant.
Mr.Kunal Vaishnav i/b. N. N. Vaishnav & Co. for Respondents
No.1 to 4.

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CORAM : R. G. KETKAR, J.

DATE : 06th SEPTEMBER, 2016

P.C.

1. Heard Mr. Pandey, learned Counsel for the applicant and Mr. Vaishnav, learned Counsel for respondents No.1 to 4, at length.
2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicant, hereinafter referred to as 'obstructionist', has challenged the judgment and order dated 8.5.2014 passed by the learned trial Judge as also the judgment and order dated 22.4.2016 passed by the Appellate Bench of the Small Causes Court at Mumbai in Execution Appeal No.50/2016. By these orders, the Courts below have made absolute the Obstructionist Notice taken out by the respondents and directed the obstructionist to deliver vacant possession of the suit premises to the plaintiffs within sixty days.

3. In support of this application, Mr. Pandey reiterated the submissions that were advanced before the Courts below. In particular, he submitted that the Suit was instituted by respondents No.1 to 4 claiming to be trustees of Seth Abdulali Bodebhoy Charitable Trust. He submitted that the trust was not made party in the suit. In other words, the decree passed by the Courts below is inexecutable. The Courts below were therefore not justified in passing the impugned orders thereby directing the obstructionist to vacate and deliver possession of the suit premises.

4. On the other hand, Mr. Vaishnav supported the impugned orders. He submitted that the suit instituted by the plaintiffs was decreed against the respondents No.5, 5a to 5c, 6a to 6c and the said judgment and decree was confirmed right upto the Apex Court. He submitted that the Courts below have categorically recorded finding that the obstructionist has no independent right, title and interest. He, therefore, submitted that no case is made out for invocation of powers under Section 115 of C.P.C.

5. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suit filed by respondents No.1 to 4 was decreed and said decree is confirmed right upto the Apex Court. When the

plaintiffs went for execution, the obstructionist obstructed the execution of the decree. The plaintiffs, therefore, took out Obstructionist Notice. After considering the evidence on record, the Courts below have held that the obstructionist does not have any independent right, title and interest in the suit premises. Mr. Pandey was not in a position to demonstrate that the obstructionist has any independent right, title and interest in the suit premises. The only contention advanced was that the Trust was not joined as a party and there is no resolution for eviction of the tenants and the suit itself was not maintainable. The said contention was also dealt with by the Courts below. Apart from that, it is settled position that the Executing Court cannot go beyond the decree. Once it is held that the obstructionist has no right, title and interest in the suit premises, no fault can be found that the order passed by the Courts below. Hence, application fails and the same is dismissed.

6. At this stage, Mr. Pandey orally applies for stay of this order for a period of eight weeks from today. He assures that the applicant and all adult family members using the suit premises will give usual undertaking in this Court within three weeks from today with advance copy to other side, incorporating therein that:

(i) they are in possession of the suit premises and nobody else is in possession;

(ii) they have neither created any third party interest nor parted with possession;

(iii) they will hereafter neither create third party interest nor part with possession;

(iv) they will pay arrears of rent, if any, within 3 weeks from today to the respondents;

(v) they will not apply for further extension of time;

(vi) in case they are unable to obtain suitable orders from higher Court within 8 weeks from today, they will vacate and hand over vacant and peaceful possession of the suit premises to the respondents.

7. In view thereof, notwithstanding dismissal of Civil Revision Application, this order shall remain stayed for a period of eight weeks from today subject to the applicant and all adult family members using the suit premises filing undertaking in the aforesaid terms within three weeks from today and serving copy in advance on the other side. It is made clear that in case arrears upto and inclusive of 8 weeks from today are not paid as also the undertaking in the aforesaid terms is not filed within three weeks from today, the interim order shall stand vacated without further reference to the Court.

8. List the Application for reporting compliance after four weeks.

(R. G. KETKAR, J.)