

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition No. 10005 OF 2016

Mr. Bhawarlal Kannaji Solanki ...Petitioner

Versus

Mr. Guruprasad S. Pardeshi ...Respondent

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Mr.Amol A. Deshpande, Advocate for the Petitioner.

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CORAM : R. G. KETKAR, J.

DATE : 29th August, 2016

P.C.

1. Not on board. At the request of Mr.Deshpande, taken up for admission.
2. Heard Mr.Amol Deshpande, learned Counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'judgment debtor' has challenged the judgment and order dated 21.6.2016 passed by the learned 6th Additional Judge, Small Causes Court, Pune below Exhibit-22 in Darkhast No.146/2015. By that order, the learned trial Judge rejected the application made by the judgment debtor for dismissing the execution proceedings instituted by the respondent, hereinafter referred to as 'decree holder'.
4. In support of this Petition, Mr.Deshpande strenuously contended that the plaintiff had instituted Civil

Suit No.329/2008 against the defendant for recovery of the possession of the suit premises *inter alia* on the ground that the plaintiff requires the suit premises reasonably and bonafide for his own use and occupation. The suit was decreed on 2.12.2009. Aggrieved by this decision, judgment debtor preferred Civil Appeal No.138/2010, which was dismissed on 22.6.2015. He submitted that during pendency of appeal, one Khimraj Oswal had submitted suit against the decree holder for specific performance of the contract. By judgment and decree dated 26.4.2012, the suit was decreed. He, therefore, submitted that the decree holder ceased to be landlord/owner of the suit premises. In fact the decree holder suppressed this fact while opposing appeal preferred by the judgment debtor. During pendency of this appeal, decree holder did not bring on record the factum of suit instituted by Khimraj Oswal against him for specific performance and that suit was decreed. As the decree holder is no longer owner/landlord of the suit premises, execution proceedings filed by him are liable to be dismissed with exemplary costs.

5. The same contention was raised before the learned trial Judge. Learned trial Judge noted that the suit instituted by Khimraj Oswal against the decree holder for specific performance was decreed on 26.4.2012. Aggrieved by that decision, decree holder preferred Civil Appeal No.590/2013. By order dated 28.9.2015, appeal was allowed

and trial Courts judgment and decree was set aside and matter was remitted to the trial Court. Learned trial Judge, therefore, held that the decree passed in Civil Suit No.1420/2011 did not attain finality.

6. It is not in dispute that Regular Civil Suit No.1420/2011 instituted by Khimraj Oswal against decree holder for specific performance was decreed on 26.4.2013. Aggrieved by that decision, decree holder preferred Civil Appeal No.590/2013. That appeal was allowed on 28.9.2015 and the trial Court decree was set aside. It also appears that the matter was remitted to the trial Court. Thus as on date, the suit instituted by Khimraj Oswal for specific performance is pending and not yet decided. It, therefore, cannot be said that the decree holder is divested of interest in the suit premises and, therefore, has no locus to maintain the Darkhast. In view thereof, I do not find that the learned trial Judge has committed any error in dismissing the application. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)