

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 569 OF 2016

Mahesh Parmeshwarlal Goenka
And Anr

...Applicants

Versus

Dr Simon Cardinal Pimenta
(deleted) and Ors

...Respondents

....

Mr.Vijay S. Gharat, Advocate for the Applicants.

Mr. Joaquim Reis, Senior Advocate a/w. Ms. Martina Sapkal, for
Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 10th OCTOBER, 2016

P.C.

1. Heard Mr. Vijay Gharat, learned Counsel for the applicants and Mr.Joaquim Reis, learned Senior Counsel for respondent No.1, at length.

2. By this application under Section 115 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants hereinafter referred to as the 'obstructionists' have challenged the judgment and order dated 4.12.2015 passed by the learned Judge, presiding over Court Room No.19 of the Court of Small Causes at Mumbai in Obstructionist Notice No.21/2010 as also the judgment and order dated 30.6.2016 passed by the Appellate Bench of the Court of Small Causes at Bombay in (Exe.) Appeal No.24/2016. By

these orders, the Courts below allowed the Obstructionist Notice taken out by first respondent, hereinafter referred to as decree holder and directed the obstructionist to hand over vacant and peaceful possession of Flat No.7, 3rd floor of a building situate at 183-D, Dr.Viegas Street, Cavel, Mumbai – 400 002 to the decree holder within two months.

3. In support of this application, Mr. Gharat raised twofold contentions:

[i] The decree of eviction passed by the Courts is a nullity. Elaborating the submission, he submitted that the decree holder had instituted R.A.E. Suit No.400/843 in the year 1996 by posing himself to be sole trustee of Roman Catho Trust. During pendency of the suit, he was removed as a sole trustee and in his place, new trustee was appointed. The suit instituted by the decree holder was dismissed. Aggrieved by that decision, decree holder preferred appeal without disclosing his removal and the fact that a new trustee was appointed. He, therefore, submitted that the decree holder had no locus to maintain appeal and the decree passed by Appellate Court confirmed and upto Apex Court is nullity. The challenge to nullity can be set up at any stage including in collateral proceedings.

[ii] In any case, the obstructionists are the licensees inducted in the year 1995. As they are licensees, the only remedy available to the decree holder is to approach the

Competent Authority under Section 24 read with Section 43 of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). He, therefore, submitted that the impugned orders deserve to be set aside and the application requires consideration.

4. On the other hand, Mr. Reis supported the impugned orders. He submitted that though the trial Court dismissed the suit, the appeal preferred by the decree holder was allowed. Aggrieved by that decision, the tenant as also one Harsh Tekmani instituted Civil Revision Application No.728/2009 in this Court which was summarily rejected on 11.12.2009. Apex Court also summarily rejected S.L.P. He submitted that the contention which is raised here for the first time was never raised in the earlier round of litigation. He further submitted that the Executing Court cannot go beyond the decree. That apart, the decree holder has filed Darkhast proceedings for execution of the decree already obtained after following due process of law. There is no question of invocation of Section 24 of the Act.

5. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. The only relevant question that to be considered is whether the obstructionists have any independent right, title and interest in the suit premises. As far as the challenge to the decree passed in

the earlier round of litigation on the ground of nullity is concerned, I do not find that any merit in the submission. The said contention was not raised in earlier round of litigation. Courts below, therefore, rightly held that the Executing Court cannot go beyond the decree. The Competent Court has passed eviction decree. Insofar as the trial Court is concerned, in paragraph-15 the learned trial Judge has observed that apart from raising objection that the decree is nullity, the obstructionists have not adduced any evidence in support of contention. In view thereof, I do not find any merit in the submission of Mr.Gharat that decree is a nullity.

6. That brings me to the contention advanced by Mr.Gharat based on Section 24 of the Act. As noted earlier, the suit filed by the decree holder is decreed by Appellate Court which decree is confirmed upto Apex Court. Decree holder has now filed Darkhast for execution of the decree. Understood thus, there is no necessity for invoking Section 24 of the Act. Hence, Civil Revision Application fails and the same is dismissed.

(R. G. KETKAR, J.)