

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12829 OF 2016

Anil Gajanan Malwadkar

...Petitioner

Versus

Satish Gajanan Malwadkar

...Respondent

....

Mr.Vaibhav R. Gaikwad, Advocate for the Petitioner.

Mr. Manmath S. Athalye, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 21st DECEMBER, 2016

P.C.

1. Heard Mr.Gaikwad, learned Counsel for the petitioner and Mr.Athalye, learned Counsel for the respondent, at length.

2. By order dated 6.12.2016, the matter was adjourned to 21.12.2016 (i.e. today) for reporting compliance. In the meantime, the petitioner was directed to hand over possession of the suit premises to the respondent on or before 20.12.2016. Mr. Gaikwad stated that the petitioner is present in Court.

3. The respondent, hereinafter referred to as 'decree holder' had instituted Special Civil Suit No.99/2005 against the petitioner, hereinafter referred to as the 'judgment debtor', for

recovery of possession of three rooms, toilet, bathroom and balcony situate on the first floor of C.T.S. No. 501/C/10, plot No.8, Sadar Bazar, Satara (for short, 'suit premises'). The suit was decreed on 1.10.2008. Judgment debtor filed application under Order IX Rule 13 of C.P.C. on 9.2.2010. As there was delay in filing that proceeding, he took out Misc. Civil Application No.18/2010 for condonation of delay. As the application for condonation of delay was dismissed in default, the judgment debtor filed Misc. Application No.30/2016 for restoration of that application. He also took out application Exhibit-10 in the restoration application praying for stay to the execution petition. By the impugned order dated 12.8.2016, the learned trial Judge dismissed the application Exhibit-10 as also application Exhibit-43 in Regular Darkhast No.130/2012. In short, the learned trial Judge has rejected the prayer made by judgment debtor for staying the execution proceedings.

4. Mr. Gaikwad submitted that though the judgment debtor was given time to hand over possession on or before 20.12.2016, the decree holder has executed the decree with police assistance on 13.12.2016. He has taken me through the documents to contend that in fact on 13.12.2016, application

was made by the judgment debtor at Exhibit-74 for issuing appropriate directions to Special Bailiff for not taking possession of the suit premises. Despite that the decree holder high handedly executed the decree and obtained possession of the suit premises.

5. Mr.Gaikwad submitted that in any case the learned trial Judge may be directed to dispose of the application for condonation of delay as also application under Order IX Rule 13 of C.P.C. uninfluenced by the observations made in the earlier orders.

6. On the other hand, Mr. Athalye submitted that on 12.8.2016, earlier possession warrant was issued. However, at the time of execution of the warrant of possession, the judgment debtor and his wife raised obstructions and, therefore, the warrant returned unexecuted. As there was no stay granted by any Court, application was moved for reissuing the possession warrant. Advocate for the judgment debtor did not remain present. After hearing the Advocate for decree holder, the learned trial Judge allowed the application on 3.12.2016 and ordered reissue of possession warrant. In pursuance thereof,

the warrant was reissued on 8.12.2016 and the matter was kept for reporting compliance on 22.12.2016. The possession was taken on 13.12.2016. He submitted that as there was no stay, the learned trial Judge was justified in re-issuing the warrant of possession. He further states that the decree holder will not part with the possession of suit premises.

7. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. In order dated 6.12.2016, I have given reasons for directing the judgment debtor to hand over possession of the suit premises on or before 20.12.2016 to the decree holder and the matter was kept today for reporting compliance. As there was no stay, the learned trial Judge ordered reissuance of warrant of possession on 3.12.2016. At that time, the Advocate for judgment debtor remained absent. Even after this Court passed order on 6.12.2016, the judgment debtor did not move the trial Court for not issuing warrant of possession. The warrant of possession was issued on 8.12.2016 and was executed on 13.12.2016 as there was no stay. Even otherwise, the judgment debtor was to hand over possession to the decree holder on or before 20.12.2016. In view thereof, I do

not find any merit in the submission of Mr. Gaikwad that the decree holder has taken possession high handedly. In fact in paragraph-8 of the impugned order, the learned trial Judge has observed that the entire attitude of the judgment debtor is only to delay handing over possession of the suit premises and there is misuse of process of the Court.

8. In view thereof, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed. The learned trial Judge will decide the application for condonation of delay as also application under Order IX Rule 13 of C.P.C. uninfluenced by the observations made in any order and on its own merits in accordance with law. Statement made by Mr. Athalye that the decree holder will not part with the possession of suit premises is accepted in the form of undertaking.

(R. G. KETKAR, J.)