

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION [STAMP] NO.28064 OF 2016

Sou Asha Hambirrao Nail

..Petitioner

Versus

Shri Uttam Vasant More
and others.

..Respondents

....

Mr.Nikhil Karnavat, Advocate for the Petitioner.

Ms. Nisha Suresh Palande, POA of the petitioner is present in person.

....

CORAM : R. G. KETKAR, J.

DATE : 06th OCTOBER, 2016

P.C.

1. Not on board. At the request of Mr.Karnavat, taken up for admission.
2. Heard Mr.Nikhil Karnavat, 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 'defendant No.2' has challenged the judgment and order dated 5.10.2016 passed by the learned District Judge-10, Pune below Exhibit-17 in Civil Appeal No.17/2011. By that order, the learned District Judge allowed the application made by respondent No.2 herein. The operative order reads thus :

“ ORDER

1. Application is allowed.
2. Respondents shall remove the lock of the suit property and possession be handed over to the applicant.
3. They shall not create 3rd party interest pending hearing of appeal forthwith.
4. If respondents fails to remove the lock within 24 hours, appellant No.2 would be at liberty to dis-lock it. If needed, she is at liberty to apply for police protection.”

4. Mr. Karnavat states that Ms. Nisha Suresh Palande, the Power of Attorney Holder of Ms. Asha Hambirrao Naik (petitioner herein), is present in the Court. He has tendered photocopy of her PAN Card which is taken on record and marked 'X' for identification. Upon taking instructions from her, Mr. Karnavat states that the petitioner is not pressing this Petition and seeks withdrawal of the Petition. He submits that by impugned order, the learned District Judge has directed the petitioner to remove the lock of the suit property within 24 hours failing which respondent No.2 herein would be at liberty to dis-lock it. If needed, she will be at liberty to apply for police protection.

5. Mr. Karnavat submits that the period stipulated in clause-4 of the operative part of the impugned order may be extended upto and inclusive of 7th October, 2016. Ms.Palande, Power of Attorney holder of the petitioner assures that the petitioner will remove the lock of the suit premises and hand over possession of the suit premises to respondent No.2 before

3:00 p.m. on 7.10.2016. In case of any difficulty, the petitioner shall produce the keys before the learned District Judge on 7.10.2016. Assurance given by the Power of Attorney holder of the petitioner is accepted.

6. Mr. Karnavat submits that while decreeing the suit, the learned trial Judge issued injunction restraining the defendants from interfering with the plaintiff's possession on the suit shop without following due process of law. He submits that it may be clarified that in case the plaintiff adopts due process of law, the observations made in the impugned order shall not come in the way of defendant No.2. In view thereof, it is clarified that in case defendant No.2 adopts due process of law, appropriate Court will decide the suit uninfluenced by the observations made in the impugned order. Petition is allowed to be withdrawn as not pressed. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)