

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10817 OF 2014

Mahsood Ismail Yeruppakatta : Petitioner.
Versus
Sukhdev S Gupta (since deceased)
Ramprasad S Gupta (since deceased)
Pushpa Ramprasad Gupta and ors. : Respondents.

Mr. S P Srivastava for the Petitioner.
Mr. Lalit V Jain for the Respondent Nos.1B-I to 1B-IV and 1D, 1F, 1G and 1H.

CORAM : R. M. SAVANT, J.
DATE : 04th January 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 13/10/2014 passed by the Appellate Bench of the Small Causes Court, Mumbai by which order the Revision Application being No.265 of 2014 came to be rejected and resultantly the order dated 01/08/2014 passed by the learned Judge of the Small Causes Court rejecting the Application filed by the Petitioner for filing another affidavit came to be confirmed.

2 The Petitioner herein is an obstructionist in so far as the decree of eviction which has been passed in favour of the Respondent Nos.1B-I to 1B-IV, 1D, 1F, 1G and 1H who are the heirs of the original Plaintiff. The Petitioner herein claims to be in possession of the premises which according to him is different than the premises in respect of which the decree has been passed. The

Petitioner's father who was Obstructionist No.2, is also obstructing the execution of the decree on the same ground. The Petitioner was the power of attorney holder of his father i.e. the Obstructionist No.2. The Petitioner had accordingly filed his own affidavit in respect of his obstruction as also filed another affidavit as a power of attorney holder of his father in respect of the obstruction of his father. The Petitioner's father expired on 09/02/2007.

3 The Petitioner had filed an application that the said two affidavits filed by him should be read in continuity. The Trial Court it seems had acceded to the said request and the Petitioner was accordingly cross examined on 06/01/2011 and 05/04/2014. The Petitioner's father as mentioned herein-above expired on 09/02/2007. It is long after the death of his father and after he has been exhaustively cross examined that the Petitioner filed the instant Application being Exhibit 101 for being permitted to file another affidavit on the ground that the affidavit filed by him as the power of attorney holder of his father loses its efficacy on account of the death of his father.

4 The Trial Court has rejected the said Application (Exhibit 101) on the ground that since the Petitioner had already filed his own affidavit in his individual capacity, he cannot be permitted to file another affidavit. The Trial Court has further observed that the efficacy of the affidavit filed by him on

behalf of his father can be considered at the hearing of the said Obstructionist Notice. The Trial Court by its order dated 01/08/2014 accordingly rejected the said Application (Exhibit 101).

5 Being aggrieved by the said order dated 01/08/2014, the Petitioner filed a Revision Application being No.265 of 2014. The Appellate Bench of the Small Causes Court which heard the said Revision Application, did not find any reason to interfere with the order passed by the Trial Court having regard to the reasons which weighed with the Trial Court whilst rejecting the said Application (Exhibit 101).

6 In my view, in the light of the concurrent orders passed by the Courts below, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]