

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

WRIT PETITION NO. 12627 OF 2015

Shri Hari Kisan Pawar,
R/at Main Road Karmala, Dist.Solapur. ... Petitioner

v/s

Shubhangi Ratanlal Shah,
R/at Main Road, Karmala, Dist.Solapur. ... Respondent

Mr.Abhijit Kulkarni for the petitioner.

Mr.Ashutosh Kulkarni for the respondent.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

ORAL ORDER:

By this petition, the Petitioner challenges the orders passed below Exh. Nos.24, 51 and 54 in Special Darkhast No.5 of 2015.

2 The Petitioner is a judgment debtor. On 9 March 1988, decree for specific performance was passed in favour of the Respondent decree holder. The appeal filed by the Respondent was disposed on 18 August 1992. Thereafter the Darkhast proceedings were initiated by the Respondent decree holder, which were withdrawn. Thereafter present Darkhast proceedings were filed.

3 The Petitioner filed two applications in the proceedings i.e. under Exh.51 and Exh.54.. In application below Exh.51, the Petitioner contended that the Darkhast proceedings are barred by provisions of *res judicata* and in application below Exh.54 the Petitioner contended that the execution proceedings are beyond the period of limitation. The learned Civil Judge, by the impugned order allowed Exh.24 taken out by the Respondent decree holder, rejecting the applications taken out by the Petitioner, and directed issuance of possession warrant in furtherance of the execution of the decree.

4 The decree has been passed 37 years ago. The decree states that the Petitioner will execute the sale deed and if the sale deed is not executed, the Respondent will get it executed through Court. It was specified that possession of the area 50 x 16 ft. is with the Respondent decree holder, it stands confirmed and for remaining portion the Respondent decree holder will be entitled to get the possession through the Court process. Though the Respondent filed execution proceedings earlier and they were withdrawn, they were under the misconception that the possession of entire property was received. As far as the portion which remains in possession of the Petitioner, Suit No.29 of 2012 is filed, which is pending. Therefore, what is sought by way of execution of the decree in Darkhast proceedings is different than the one which is subject matter of Regular Civil Suit No.29 of 2012. As regard the contention regarding *res judicata* is concerned,

the learned Civil Judge has rightly rejected the same holding that the subject matter of these two proceedings are different and also that there is nothing to show that the possession of the entire property has been received by the Respondent decree holder.

5 As regard the contention regarding limitation is concerned, the decree is dated 9 March 1988. The sale deed was executed on 18 August 1994. The decree itself provided that it is after the execution of the sale deed the Respondent decree holder could move for possession. The Respondent has approached the Court within a period of limitation after execution of the sale deed and, therefore, the learned Civil Judge was right in holding that the proceedings were within limitation.

6 The successive applications filed by the Petitioner are nothing but abuse of process of law. Attempts are being made by the Petitioner to stall the execution of decree passed 35 years ago. No case is made out for interference under Article 227 of the Constitution of India.

7 The writ petition is rejected.

8 At this stage, the learned counsel for the Petitioner seeks continuation of the interim order. This request cannot be considered in view of the repeated observations of the Apex Court stressing the

need to curb the abuse of Court process by the judgment debtors to depriving the decree holder of benefits of the decree. The oral application for stay stands rejected.

(N. M. Jamdar, J.)