

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION [ST] NO.2958 OF 2017**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
	Mr.Ashwin Kapadnis, Advocate for applicants.

CORAM : R. G. KETKAR, J.

DATE : 31/01/2017

P.C.:

1. Not on board. At the request of Mr. Kapadnis taken up for admission.
2. Heard Mr.Ashwin Kapadnis, learned Counsel for the applicants.
3. By this application under Section 115 of C.P.C., the applicants have challenged the judgment and order dated 12.1.2017 passed by the learned 4th Civil Judge, Senior Division, Nashik below Exhibit-4 in Regular Darkhast No.02/2017. By that order, the learned trial Judge issued injunction restraining the applicants, hereinafter referred to as the 'judgment debtors' from disturbing possession of the decree

holder over the suit property more particularly described in Schedule-1 until further orders, if already not acted as per the notice dated 23.11.2016.

4. In support of this application, Mr. Kapadnis submitted that respondent No.1, hereinafter referred to as the 'decree holder' had instituted Regular Civil Suit No.147/2011 against judgment debtors No.1 & 2 for declaration that the notice dated 4.3.2011 is bad in law as also for perpetual injunction restraining judgment debtors from dispossessing the decree holder from the suit property without following due process of law. Suit was partly decreed. The learned trial Judge declared that the notice dated 4.3.2011 issued by the judgment debtors to the decree holder is illegal. The learned trial Judge also issued injunction restraining the judgment debtors from dispossessing the decree holder over the suit property more particularly described in paragraph-1 without following due process of law. He submitted that the judgment debtors have followed due process of law and obtained the possession. The learned trial

Judge was not justified in issuing injunction against the judgment debtors.

5. As noted earlier by impugned order, the learned trial Judge has issued injunction against the judgment debtors. Clause-1 of operative part of the impugned order reads thus :

“1. The judgment debtors are restraining from disturbing the possession of the decree-holder over suit property more particularly described in Schedule-1 annexed to this execution until further orders, if already not acted as per their notice dated 23.11.2016.”

6. Perusal of this clause shows that it is clearly referable to Order XXXIX Rules 1 & 2 of C.P.C. In view of Section 141 of C.P.C., the provisions of suit are applicable to the execution proceedings. In view thereof, the judgment debtors have an equally efficacious alternate statutory remedy by way of filing Misc. Civil Appeal/Appeal from Order under Order XLIII Rule 1(r) of C.P.C. Section 115 of C.P.C. lays down that this Court will exercise revisional jurisdiction where no appeal lies.

7. In view thereof, Civil Revision Application is

dismissed on the ground of maintainability reserving liberty to the judgment debtors to file Appeal from Order/Misc. Civil Appeal under Order XLIII Rule 1(r) of C.P.C. It is made clear that I have not examined merits of the case. Registry is directed to return the certified copies to the judgment debtors. Order accordingly.

8. All parties to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)