

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3135 OF 1999**

Shri. Sachin Shamrao Salaskar Petitioner

Vs.

M/s Shriya Constructions Respondent

Mr. Drupad Patil i/by Mr. G.S. Godbole for the Petitioner.
Mr. S.S. Kulkarni i/by Ms. Madhura V. Deshmukh for the Respondent.

**CORAM : G.S. KULKARNI, J.
DATE : 2 AUGUST, 2017**

JUDGMENT :

1 This petition challenges an order dated 19th September, 1998 passed by the Additional District Judge, Raigad, Alibaug whereby the revision application as filed by the petitioner challenging the order dated 4 July, 1998 passed by learned Civil Judge, Senior Division, Panvel came to be dismissed. The learned trial judge by the order dated 4 July, 1998 had directed the respondent-plaintiff decree-holder to comply with terms 1 and 2 of the decree within one month and report of such compliance was directed to be submitted in the execution proceedings. There was a further direction to the decree-holder that in case he fails to

comply with the said direction within the stipulated time, the darkhast will be treated as premature and necessary order will be passed to that effect.

2 The facts are not in dispute. The petitioner is one of the tenant of the suit premises. The respondent instituted a suit seeking eviction of the petitioner. By the judgment and order dated 12th September, 1997, the respondent's suit came to be decreed in following terms :

“1 The plaintiffs before receiving possession of the suit premises from the defendant shall make legal arrangement with the defendant to allot 750 sq. ft. carpet area in proposed building on suit property bearing C.T.S. No.1445, 1446, 1447 and 1448 within three months from the date of the decree.

2 While making such arrangement, it shall be made in writing and incorporating the details of the arrangement.

3 In pursuance of such arrangement, the defendant shall thereafter within one month handover peaceful and vacant possession of the suit premises to the plaintiffs for demolition and construction of new building.

4 In case, the defendant, as above directed fails to vacate the suit premises, the plaintiff shall be entitled to recover the possession of the suit premises through Court of Law.

5 The plaintiff shall complete new construction within a period of one year from the date they received possession of the suit premises from the defendant.

3 The respondent, thereafter moved an execution application. In the said execution application, the petitioner filed an application in question inter alia contending that Clauses 1 and 2 of the decree provides that the respondent-plaintiff shall enter into an arrangement with the petitioner to allot 750 sq. ft. carpet area in the proposed building of the suit property. The arrangement was required to be in writing and only after such arrangement is made and thereafter within one month, the petitioner would handover the vacant possession of the suit premises and the respondent, would then undertake demolition and construction of the new building. Thus, the contention of the petitioner was that the execution proceedings as adopted by the respondent-plaintiff were pre-mature due to non-compliance of paras 1 and 2 of the decree. The executing court, by the order dated 4th July, 1998 as noted above, put the respondent-plaintiff to terms and ordered to comply the necessary requirements of the decree and disposed of the objection application of the petitioner. However, the petitioner was not satisfied with this and approached the revision court. The revision court however, dismissed the application and this is how the present proceedings.

4 This petition was admitted, however, with no interim relief. It appears that by the passage of time, the decree was executed to the extent that the possession of the suit premises was obtained by the respondent-plaintiff, the suit premises came to be demolished and the new building has been constructed by the respondent-plaintiff. Mr. Kulkarni, learned counsel for the respondent, on instructions, submits that even today in the new construction which is undertaken by the respondent, premises admeasuring 750 sq. ft. carpet area are kept vacant and the respondent is desirous of complying the obligation under the decree and handover the said premises to the petitioner. Statement is accepted. However, Mr. Kulkarni's grievance is that the petitioner, however has not come forward to accept the possession of this premises and also enter into an agreement in that regard. Mr. Patil, learned counsel for the petitioner agrees that this fair action on the part of the respondent-plaintiff would resolve the entire issue between the parties, in as much as the object of the decree that the petitioner shall receive alternate premises would stand satisfied. Mr. Patil submits that however despite several attempts he could not contact his clients and take instructions on the request of the respondent/plaintiff that the petitioner/defendant should enter into necessary agreement as per the

decree and take possession of the premises, which are kept reserved for him.

5 Considering the above circumstances, the learned counsel for the parties would agree that nothing survives in this petition which would require further adjudication. It is clear that the respondent-plaintiff is ready and willing to handover premises admeasuring 750 sq. ft. in the new construction undertaken by them. The petitioner thus needs to approach the respondents to execute the necessary agreement.

6 In the above circumstances, this petition is required to be disposed of with the above observations.

7 Office to forward a copy of this order to the petitioner by registered post as also through local Court and place on record the compliance to that effect for reporting the court.

(G.S. KULKARNI, J.)