

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

CIVIL REVISION APPLICATION NO.194 OF 2017

Manish Umershi Shah Alias Gada	 Applicant
versus	
Sheth Virji Peraj Bhatia Sanatorium	... Respondent
.....	

- Mr.P.J. Thorat i/b. Mr.Ajay Das for the Applicant.
- Mr.D.C. Pathak, Advocate for the Respondent Nos.2 & 3.

**CORAM : R.M.SAVANT, J.
DATE : 05th APRIL, 2017.**

P.C. :

1. The revisionary jurisdiction of this Court is invoked against the order dated 28/02/2017 passed by the Appellate Bench of the Small Causes Court by which the appeal filed by the Petitioner herein came to be dismissed and resultantly the order dated 30/01/2012 passed by the learned Judge of the Small Causes Court came to be confirmed.

2. The Civil Revision Applicant is the original Defendant No.1 in the suit filed by the Respondent Nos.1 to 4 herein being L.E. as E. Suit No.3/3 of 2005 against the Defendants. The order for pasting summons came to be passed by the trial Court as the

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suit premises were invariably found locked, as and when the bailiff visited the suit premises. The bailiff accordingly submitted his report. It was to the effect that he had made enquiries with the neighbours and has accordingly mentioned in his report that the suit premises were found locked. The suit thereafter proceeded exparte in view of the fact that the no appearance was put on behalf of the Defendants. The suit was decreed on 23/11/2005 by the learned Judge of Small Causes Court and it was directed that the Defendants to handover possession of the suit premises to the plaintiff.

3. The said decree was put in execution by the Plaintiff by filing Execution Application No.159/11. The notice in respect of said execution which was dated 23/08/2006 was served upon the Defendant No.1 who accepted the notice on behalf of the Defendant Nos.2 and 3. In the said Execution Proceeding the Plaintiff filed Obstruction Notice No.11 of 2007 for removal of obstruction, pursuant to which an order of possession was passed. The obstructionists had obstructed the possession. The

said obstruction was made by one Bhawarsingh Ramlal Purohit and one Harish Ramlal Purohit. The said obstructionist opposed the execution of decree on the ground that they were in possession and not the Defendants. The Obstructionist Notice filed by the plaintiff came to be made absolute by the trial court i.e. learned Judge of the Small Causes Court.

4. The obstructionist thereafter carried the matter in appeal before Appellate Bench of the Small Causes Court. The Appellate Bench of the Small Causes Court dismissed the Appeal on 15/06/2010. Thereafter they carried the matter to this Court by way of Civil Revision Application No.463/10 which came to be dismissed by a learned Single Judge of this Court by order dated 21/10/2010. Thereafter the obstructionists carried the matter to the Apex Court by way of a Special Leave Petition. The Apex Court by order dated 21/02/2012 dismissed the Special Leave Petition. In so far as the obstructionists are concerned, the order passed by the learned Judge of the Small Causes Court making the obstructionist notice filed by the plaintiff absolute

became final and binding. It seems that the Petitioner herein thereafter filed an application under Order IX Rule 13 of CPC for setting aside the exparte decree on the ground that the suit summons was not served upon the Defendants.

5. The trial Court having regard to the aforesaid conspectus of facts and especially having regard to the fact that the summons dated 23/08/2016 in the Execution Proceedings, was served on the Defendant No.1, who had accepted notice on behalf of other Defendants, as also considering fact that the obstructionist had agitated the issue right upto the Apex Court, did not find any merit in the said application filed by the Defendants and accordingly rejected the application by order dated 03/01/2012. The said order was carried in appeal by the Defendants by way of filing Miscellaneous Appeal No.44/12. The Appellate Bench of the Small Causes Court did not deem it appropriate to interfere with the order dated 03/01/2012 passed by the learned Judge of the Small Causes Court and accordingly dismissed the appeal.

6. In the light of the aforesaid conspectus of facts wherein the fact of the summons in the Execution Proceeding dated 23/08/2016 being served on the Defendant No.1 and considering the fact that the obstruction was sought to be put by the obstructionist in the execution of the decree passed in favour of the plaintiff, for which the matter was carried right upto the Apex Court, this Court does not find any bonafides in the application filed by the defendants for setting aside the exparte decree. It is only after the obstructionists have failed in their endeavour of stalling the execution of the decree that the Defendants have stepped in by filing the application under Order IX Rule 13 of the CPC. In my view, the orders passed by the Court below for rejecting the application and for confirming the order passed by the Trial Court, do not suffer from any illegality or infirmity for this Court to interfere in its revisionary jurisdiction. The Civil Revision Application is accordingly dismissed.

(R.M.SAVANT, J.)