

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

WRIT PETITION STAMP NO.9650 OF 2017

Mrs. Lekha Ghanshyam Dholakia	..Petitioner
Versus	
Smt. Tolabai Nagu Namade and others	..Respondents
 Shri. D. M. Gupte for the Petitioner.	

**CORAM : R. M. SAVANT, J.
DATE : 18th APRIL, 2017**

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 23.03.2017 passed by the Learned District Judge-10, Pune, by which order, the Appeal filed by the Petitioner herein came to be dismissed with costs quantified at Rs.5000/-. The Appellate Court further issued a direction that the Executing Court shall expedite the execution process.

2 The Petitioner herein is an obstructionist to the decree passed in Regular Civil Suit No.524 of 1999. The said decree was passed against the Respondent Nos.4 and 5 herein. The challenge to the decree by the Respondent Nos.4 and 5 failed upto this Court as the Appeal filed by the Respondent Nos.4 and 5 came to be dismissed by the Lower Appellate Court as also the Civil Revision Application came to be

dismissed by a Learned Single Judge of this Court. The Petitioner herein is the married sister of the Respondent No.5 and claims to be doing business alongwith the Respondent No.5 in the suit premises after the death of the original tenant who was their father. The obstruction is on the ground that the Petitioner has an independent right in the premises after the death of her father i.e. the original tenant. The application filed by the Petitioner Exh.75 in the Darkhast proceedings filed by the original Plaintiffs i.e. the Respondent Nos.1 to 3 herein came to be rejected by the Executing Court i.e. the Learned Judge of the Small Causes Court by order dated 02.01.2017. The said rejection is on the ground that the Petitioner i.e. the obstructionist does not have any independent right in the suit premises and that she is claiming right on the basis of being the heir of the original tenant. In so far as her case that she is doing business alongwith her brother is concerned, the Executing Court observed that there is no material in that regard placed on record. As indicated above, the Executing Court by order dated 02.01.2017 rejected the said application Exh.75 filed by the Petitioner to obstruct the execution of the decree.

3 The Petitioner aggrieved by the order dated 02.01.2017 passed by the Executing Court carried the matter in Appeal by way of Civil Appeal No.79 of 2017. The Lower Appellate Court i.e. the Learned

District Judge-10, Pune, reiterated the findings of the Executing Court on the aspect of the Petitioner i.e. the obstructionist having no independent right as also the finding that the case of the Petitioner that she was doing business in the suit premises could not be accepted in the absence of any evidence in that regard. The Lower Appellate Court accordingly by the impugned order dated 23.03.2017 has dismissed the Appeal.

4 The Learned Counsel appearing on behalf of the Petitioner Shri. D. M. Gupte would seek to reiterate the case of the Petitioner as urged before the Courts below.

5 In my view, having regard to the concurrent orders passed by the Courts below and especially having regard to the fact that the Petitioner has failed to demonstrate that she has any independent right in the suit premises, no interference is called for with the impugned order in the writ jurisdiction of this Court. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]