

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

WRIT PETITION NO.6892 OF 2017

M. B. K. Enterprises & Ors.

... Petitioners

Vs

Saidpur Jute Co. Ltd. & Ors.

... Respondents

...

Mr. S. L. Shah i/b. Shah Legal for the Petitioners.

Mr. Atul Daga a/w Amit Mehta i/b. Mahimtura & Co. for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE :12th OCTOBER, 2017

P.C. :

1. Not on board. Upon mentioning taking on production Board.

2. At the instance of the petitioners, in this petition, if after this was disposed of, this Court made a following order on 9th August 2017:-

- 1] Not on board. In view of urgency, taken on production board.
- 2] Mr. S.L. Shah, learned counsel for the petitioners, states that the suit premises will be handed over to the respondent-landlord positively on or before 11th August 2017. He, in fact, submits that the possession will be handed over on 11th August 2017 at 4.00 p.m.
- 3] Further, Mr. Shah submits that some Commissioner/Advocate may be deputed or to remain present at the time of handing over of possession and

further, this Advocate/Commissioner may be permitted to take photographs of/in the suit premises at the time of handing over of the suit premises.

- 4] *Mr. Daga, learned counsel for the respondent-landlord, submits that appointment of such Commissioner/Advocate is quite unnecessary and may create further complication, since, in this case, eviction had been ordered on the grounds of permanent alteration carried out by the petitioners. In any case, he submits that even if leave is to be granted to take photographs, it may be clarified that such photographs may not be used by any parties in the proceedings pending before the Appellate Bench of the Small Causes Court.*
- 5] *Accordingly, the time limit for handing over possession is extended up to 11th August 2017. The petitioners, consistent with their statement, shall hand over the possession to the respondent-landlord on 11th August 2017 at 4.00 p.m.*
- 6] *The parties are permitted to take assistance of Advocate Aseem Naphade, who shall remain present at the time of handing over of possession. Advocate Aseem Naphade shall also be entitled to take photographs of and in the premises. However, it is made clear that such photographs shall not be used by either parties in the proceedings pending before the Appellate Bench of the Small Causes Court.*
- 7] *The praecipe is disposed of with the aforesaid terms.*

3. Now, the respondents, have taken out a praecipe to point out that although the petitioners did vacate the suit premises on 4th August 2017, the petitioners, have, in the compound of the building

where a suit premises located parked two vehicles and despite several requests, refused to take the same away. Accordingly, directions are sought to direct the petitioner to take away the said vehicles. Upon this, the learned counsel for the petitioner points out that since this petition is already disposed of, praecipe may not be entertained. In doing so, the learned counsel for the petitioner, completely forgets that on the previous occasion, in some what similar circumstances, the request of the petitioner was accepted, so as to put an end to the litigation or at least part of the litigation.

4. Although, the contention of the petitioner appears to be at least *prima facie* dishonest and the conduct of the petitioner also appears to be aimed at harassing the respondent and protracting the litigation, it is only appropriate, technical objection raised by the learned counsel for the petitioner, that an application to remove the car be made before Appeal Court where the appeal is pending, is upheld.

5. The learned counsel for the respondents submits without prejudice that the respondent will apply to the Appeal Court for

necessary orders within a period of four weeks from today. The Appeal Court, is requested to dispose of such application within a period of maximum four weeks from the date the same is filed. If the Appeal Court comes to the conclusion that the petitioners are creating unjustified hurdles or their conduct is dishonest and obstructive, the Appeal Court, can consider imposition of exemplary costs on the petitioner herein. However, it is left to the Appeal Court to decide such application on its own merits and in accordance with law.

6. It is clarified that the aforesaid observation are only *prima facie*.

7. All concerned to act on an authenticated copy of this order.

(M. S. SONAK, J.)