

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6170 OF 2017

Madan Vyanktesh Damale

..Petitioner

Vs.

Smt. Sangita Sarpatil

..Respondent

Mr. Mihir Raut i/b Mr. Nitin P. Deshpande, for the Petitioner.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JUNE 19, 2017.

P. C.:

This Writ Petition has been filed under Article 227 of the Constitution of India seeking to quash and set aside the order dated 31st March, 2017 below Exhibit-73 as well as another order of the same Judge below Exhibits 66 and 78. These orders were passed by the learned Second Joint Civil Judge, Junior Division, Alibag in Regular Darkhast No.39 of 2014.

2 As far as Exhibits 66 and 78 are concerned, these applications were filed by the Judgment Debtors for carrying out an enquiry and handing over the possession of the goods to the Judgment Debtor. According to the Judgment Debtors (Petitioner

herein), he has prepared a list of items which were in the suit property at the time of execution. However, the Bailiff in his report has not mentioned all the properties and therefore Exhibit-66 was filed.

3 The Trial Court after examining the Panchanama as well as the report of the Bailiff and hearing the parties came to a conclusion that the items mentioned in the applications filed by the Judgment Debtors were in fact not found and consequently could not be seized by the Bailiff. The Trial Court took note of the fact that application at Exhibit-66 was filed almost after a month after the execution was done. There was nothing on the record to disbelieve the report of the Bailiff or the Panchanama. It is in these circumstances, that the applications below Exhibits 66 and 78 were rejected. As far as Exhibit-73 is concerned, this was an application moved by the Judgment Debtor under Order 26 Rule 9 of the Code of Civil Procedure, 1908 seeking appointment of a Court Commissioner. On this application (Exhibit-73), the Trial Court found that this application was filed after the Judgment Debtor had visited the place where the belongings were kept. The Court recorded that no other details were provided by the Judgment Debtor regarding of the loss of the goods, if any, to the

Judgment Debtor. Furthermore, the Judgment Debtor was permitted to take the belongings from the Decree Holder, which the Judgment Debtor failed to do.

4 Looking to all the facts, the Trial Court was of the view that the application below Exhibit-73 cannot be granted.

5 I have gone through the impugned orders both dated 31st March, 2017 passed below Exhibits 66 and 78 as well as below Exhibit-73. I do not find that they suffer from any perversity and/or any error of law apparent on the face of the record. Whilst rejecting these applications, the Trial Court has given proper and cogent reasons. I do not see any reason to interfere with the same.

6 For all the aforesaid reasons, this Writ Petition is dismissed. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)