

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

WRIT PETITION (St) NO. 13517 of 2017

Darryl D'Monte & anr	.. Petitioners
vs	
Vadilal Kunverji Gada & ors	.. Respondents

with
WRIT PETITION NO.6498 OF 2017

Chandrakant Jagannath Tare	.. Petitioner
vs	
Darryl D'Monte & ors	.. Respondents

Mr.N.V.Walawalkar, Senior Advocate a/w Mr.Nusrat Shah, Ms.Ema Almeida, Mr.Kevin Gala, Ms.Samma Shah and Ms.Richa Pachori I/b Ms.Naazish Nusrat Shah for the Petitioners in WP (St) No.13517 of 2017 and for Respondent nos.1 and 2 in W.P.No.6498 of 2017
Mr.G.S.Godbole I.b K.P.Tiwari & Co for Respondent nos. 5 to 7 in W.P.(St) No.13517 of 2017
Mr.Kunal Bhanage for Respondent nos.2 and 3 in W.P.(St) No. 13517 of 2017

Coram : G.S.KULKARNI, J.
Date : DECEMBER 18, 2017

P.C

Mr.Walawalkar, learned Senior counsel for the petitioners and Mr.Godbole, learned Counsel for Respondent nos.5 to 7, Mr.Bhanage, learned Counsel for Respondent nos. 2 and 3.

2. Respondent Nos.1 and 4 appears to have assigned their rights in favour of the other Respondents. Hence, parties are not independently opposing this Petition.

3. After having heard the learned Counsel for the parties and considering the nature of the impugned order dated 27 March 2017 passed by the Appellate Bench of the Small Causes Court it is appropriate that Writ Petition Stamp No.13517 of 2017 is disposed of by directing the executing Court to adjudicate the Obstructionist Notice No.15 of 2006 as early as possible and in any event within period of six months from today keeping open all contentions of the parties on merits of the matter.

4. In Writ Petition No.6498 of 2017 this Court by an order dated 21 April 2017 had granted ad-interim relief in terms of prayer clause (b) which reads thus :-

“That Pending the hearing and final disposal of the captioned Writ Petition, this Hon'ble Court may be pleased to stay the operation and implementation of the order dated 27th March, 2017 passed by the Appellate Court of Small Causes (Bandra Branch) in Appeal No.20 of 2014 in Exhibit No.71 in Obstructionist Notice No.15 of 2006 in T.E.& R.Suit NO.66 of 2002 and also stay the proceedings of Obstructionist Notice No.15 of 2006 in T.E.& R.Suit No.66 of 2002.”

5. Mr.Walawalkar would contend that by the above ad-interim order the proceedings of Obstructionist Notice No.15 of 2006 itself are stayed and this creates an impediment for the executing Court to proceed in adjudicating Obstructionist Notice No.15 of 2006 though the issue which is involved in this Petition concerns only some of the obstructionist, the impugned order is a common order passed by the Appellate Bench. There cannot be any dispute on the contentions as urged by Mr.Walawalkar. It is quite clear that the parties are different obstructionists and they are asserting their respective rights. By the impugned order the Petitioners, who are Obstructionist Nos.2 and 3 have been directed to hand over vacant possession of the suit property in their possession within one month from today. Admittedly, the proceedings against Obstructionist No.1 are at large and are required to be adjudicated by the executing Court. The ad-interim relief which is granted by this Court prevent the executing Court from proceeding with the adjudication of the proceedings against Obstructionist No.1, who is represented by learned counsel Mr.Godbole.

6. In the above circumstances, the order dated 21 April 2017 is required to be modified by the following order :-

(1) The stay granted by an order dated 21 April 2017 stands vacated in regard to the adjudication of Obstructionist Notice No.15 of 2006 qua Respondent nos.5 to 7 – Obstructionist No.1.

(2) As regards the contentions of the Petitioners in Writ Petition No.6498 of 2017 being Obstructionist Nos.2 and 3, the same would be considered on the merits of the Petition on the adjourned date of hearing.

(3) All contentions of the parties in that regard are especially kept open.

7. Writ Petition (St.) No.13517 of 2017 is disposed of with a direction to the executing Court to dispose of Obstructionist Notice No.15 of 2006 within a period of six months from today. All contentions of the parties on merits of the matter are expressly kept open.

8. At this stage, Mr.Walawalkar learned Senior Counsel for the Petitioners would contend that it has become necessary for the petitioners to seek urgent ad-interim reliefs qua the suit premises in possession of the Obstructionist. If that be so, the petitioners are at liberty to move an appropriate application before the executing Court which shall be considered on its own merits and in accordance with law. It is expected that the parties will co-operate in the adjudication of Obstructionist Notice No.15 of 2006.

{G.S.KULKARNI, J}