

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8347 OF 2017

Nirmal Magraj Jain (Shreeshreemal)	..	Petitioner
vs.		
Deepak Hanumant Kadam	..	Respondent

Ms Anusha Amin for Petitioner.
None for Respondent.

CORAM : M. S. SONAK, J.
DATE: 31 AUGUST 2017

P.C :

- 1] Not on board. Upon production, taken on production board.
- 2] Heard Ms Amin for the petitioner.
- 3] The challenge in this petition is to the order dated 21st April 2017, by which the learned trial Judge has dismissed the petitioner's application below Exhibit 23. The petitioner, by the said application, had urged that the decree holder steps in the witness box first, since, it is the decree holder, who had filed an application before the executing court complaining obstruction to the execution of the decree of eviction.
- 4] In this case, the decree holder has obtained a decree of eviction against Pravin Kumar Bharmal. The eviction decree was

challenged in appeal, revision as well as special leave petition, all of which have since been dismissed. At the stage of execution, the petitioner, who claims to be the brother of Pravin Kumar Bharmal has obstructed the execution by urging that he too is the tenant in respect of the suit premises. The petitioner has filed an application to that effect before the executing court.

5] In the aforesaid circumstances, the learned trial Judge is right in dismissing the petitioner's application below Ex. 23. Since the petitioner, has raised a plea that he is independently the tenant in respect of the suit premises through his deceased father / original tenant, it is for the petitioner, to make good such a plea by stepping into the witness box.

6] There is no jurisdictional error in the making of the impugned order. Therefore, this petition is dismissed.

7] Normally, in a case of this kind, costs are required to be imposed upon the applicant. However, Ms Amin, learned counsel for the petitioner points out that the matter is now posted on 14th September 2017 and in that sense, the petitioner has not delayed the proceedings before the executing court. Accepting this submission, no costs are imposed. Accepting this submission, no costs are imposed. However, the petitioner to place on record

authenticated copy of this order before the executing court within a period of one week from today and not to seek any unnecessary adjournments before the executing court.

(M. S. SONAK, J.)

Chandka