

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4968 OF 1998

Sakhubai Janardan Naik -
since deceased by heirs
Narayan Janardan Naik & Ors. ..Petitioners
VS.
Smt. Rewa Mohanlal Rohit ..Respondent

Mr. Rajesh Parab for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 23 JUNE 2017

P.C :

1] Heard Mr. Rajesh Parab, learned counsel for the petitioners.
The respondent, though served, neither present nor represented.

2] This petition is directed against the orders dated 17th February 1998 and 23rd June 1998 made by the Small Causes Court and the Division Bench of the Small Causes Court respectively.

3] The effect of the impugned orders is that the respondent, who is obstructionist obstructing the execution of eviction decree dated 15th January 1986, has been permitted to file an additional affidavit in reply in response to the obstructionist's notice no. 151 of 1986 taken out by the petitioner – decree holder.

4] The petitioners, are the original plaintiffs and decree holders, in suit no. 1890 of 1975 seeking recovery of possession of the suit

premises. The trial court, had initially dismissed the suit vide judgment and decree dated 10th December 1975. However, in appeal, the appeal court, decreed the suit vide judgment and decree dated 15th January 1986. The petitioner – decree holder, took out execution proceedings no. 902 of 1986 to execute the decree dated 15th January 1986. Since, the execution was obstructed, the petitioner, took out obstructionist notice no. 151 of 1986 before the executing court. The obstructionists filed a reply. However, by misc. application no. 910 of 1997, the obstructionists applied for leave to file additional affidavit in reply. Such leave was granted by the executing court vide order dated 17th February 1998. The petitioners revision against the order dated 7th February 1998 was dismissed by the Division Bench of the Small Causes Court, *inter alia* on the ground of maintainability. Hence, the present petition.

5] Mr. Parab, learned counsel for the petitioners submits that in this case, revision application was maintainable before the Division Bench and the Division Bench failed to exercise jurisdiction vested in it in declining to entertain the revision petition. Mr. Parab further submits that there is really no provision under the statute for filing of additional affidavit and therefore, no leave should have been granted to file any such additional affidavit in reply. Mr. Parab

further submits that the obstructionists, by filing the additional affidavit in reply, virtually seek to challenge the decree which has been made in favour of the petitioner and such challenge is impermissible in obstructionist proceedings. For all these reasons, Mr. Parab submits that the impugned orders warrant interference.

6] Having perused the impugned orders as also the other material on record, it is to be noted at the outset that the impugned orders, only permit the respondent obstructionist to file additional affidavit in response to the obstructionist notice taken out by the petitioner. The grant of leave to file additional affidavit in reply does not mean and should not be construed to mean that the executing court has accepted any of the contentions raised by obstructionist in their affidavit in reply. The issue as to whether the defence, which are, now sought to be raised by the obstructionist can at all be raised by them is an issue which will have to be gone into by the executing court after accepting the additional affidavit in reply. Thus construed, it cannot be said that any serious prejudice has occasioned the petitioners on account of the impugned orders. In the interests of justice, the executing court, can always permit parties to file additional affidavit in reply. The discretion, which is exercised in the present case cannot be said to have been arbitrarily exercised. Accordingly, there is no case made out to

interfere with the impugned orders. In any case, the impugned orders, as now interpreted, ally the apprehensions expressed by the learned counsel for the petitioners, in that, the mere acceptance of the additional affidavit in reply can never be construed as acceptance of the contentions raised by the affiant therein. It is clarified that all such contentions and objections of both the parties are specifically left open.

7] Considering that the execution proceedings are pending since long, the executing court is directed to dispose of such execution proceedings as expeditiously as possible and in any case within a period of three months from today.

8] The Rule is disposed of in the aforesaid terms. The interim order is vacated so as to enable the executing court to dispose of the execution proceedings in accordance with law and on their own merits, as expeditiously as possible, and in any case within a period of three months from the date of production of authenticated copy of this order.

9] In the circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)