

JPP

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

CIVIL REVN. APPLICATION NO. 701 OF 2016

Kumar Naidu.

... Applicant.

V/s.

Mr. Mathurdas Shewakram
(Since deceased) and Ors.

... Respondents.

Mr. Ditendra Mishra for the Applicant.

Mr. B.B. Nangare i/b. B.B. Nangare & Assoc. for Respondents 1 to 3
and 4 & 6.

CORAM : N.M. Jamdar, J.

25 January, 2017.

Oral Order :-

By this Revision Application the Applicant has challenged the order passed by the learned Small Causes Court Judge, Mumbai allowing the obstructionist notice taken out by the Respondent – landlord decree holder and dismissing the Appeal filed by the Applicant.

2. The Suit bearing No. 408 of 1978 filed by the Respondent – landlord for possession of the suit premises. The

decree was passed on 6 February 2008 and Appeal was preferred by the Original Defendant which was dismissed on 8 November 2012. The Writ Petition was filed by the Original Defendant which was dismissed on 14 February 2013 granting four weeks' time to the Defendants upon an undertaking. The undertaking was not filed. Thereafter, on 18 April 2013 one of the heirs of the Original Defendant who had verified the Writ Petition filed a R.A.D. Suit No. 725 of 2013 for declaration that she is a tenant which suit was withdrawn. Thereafter, on 27 July 2013 an application was filed by the Applicant in the Execution Application for stay of execution of the decree. The application was registered as Marji Application No. 492 of 2013. Therefore, an obstructionist notice was taken out.

3. The learned Small Causes Court Judge considered the rival contentions. As far as the Applicant is concerned, it was his case that he is an adopted son. The learned Small Causes Court Judge in detail considered the contentions and came to the conclusion that the Applicant has not demonstrated any independent right in respect of the suit premises. Accordingly, by order dated 8 October 2015, the learned Small Causes Court Judge allowed the Obstructionist Notice. Appeal No. 37 of 2016 was filed by the Applicant before the Appellate Bench of the Small Causes Court, Mumbai. The Appellate Bench considered the rival contentions and dismissed the Appeal.

4. Heard the learned Counsel for the parties. The suit has been instituted in the year 1978 and inspite of the suit being decreed, the Respondent – landlord is yet to enjoy the fruits of the decree. It was contended by the Applicant that the Applicant was put in possession through Obstructionist No.2. It was his contention that he was adopted by Obstructionist No.2 and he was living in the suit premises as her son. The case of Obstructionist No.2 is considered by the Appellate Bench wherein it is found that except bare words by the Obstructionist No.2, nothing has been shown that she had any time resided in live-in relationship with the Original Plaintiff. No cogent evidence by examining any witness was led, the Appellate Bench in detail has considered the evidence on record has negated the contentions of all the obstructionist. The Applicant is claiming through the Obstructionist No.2 who herself has been held to have no right. No interference is warranted in these findings of fact.

5. In the circumstances, the Civil Revision Application is entirely frivolous and is filed only to delay and prolong the agony of the Respondent – landlord. The Civil Revision Application is dismissed with costs of Rs. 10,000/-, payable to the Respondent - landlord.

(N.M. Jamdar, J.)