

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 65 OF 2017  
WITH  
CIVIL APPLICATION No. 89 OF 2017 IN A.O. No. 65 OF 2017**

Rita Mahesh Dadarkar & Ors. ... Appellants/Applicants  
Vs.  
Dhondur Nana Jadhav & Ors. ... Respondents

Mr. Mehul Rathod i/b. M/s. Legal Vision, Advocate for the appellants/applicants.  
Mr. Shailesh Kumar Rai a/w. Mr. R.K. Upadhyay, Advocate for respondent no. 1.

**CORAM: MRS.MRIDULA BHATKAR, J.  
DATE: 14<sup>th</sup> August, 2017.**

**P.C.:**

Admit. By consent, the Appeal from Order is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 26<sup>th</sup> October, 2016 passed by the learned Judge of the City Civil Court in Notice of Motion No. 2451 of 2016 in disposed of Execution Application no. 50 of 2013 out of decree in Suit No. 619 of 2008.

3. The appellants are the third party and the respondent no. 1/plaintiff is a decree holder in whose favour the trial Court has

passed the judgment and order of the possession of the suit premises. In the Execution Proceedings, the possession warrant under Order 21 Rule 35 of the Code of Civil Procedure was issued and as per the bailiff report, the possession of the suit flat was taken on 6<sup>th</sup> August, 2016. The suit flat was vacant but under lock. The lock was broke open and the possession of the flat was handed over to the respondent no. 1/decree holder, who then put his own lock on the suit premises. However, on 6<sup>th</sup> August, 2016 the appellant no. 1/third party broke upon the lock put by the decree holder and then she put her own lock on the suit flat. Therefore, she filed Chamber Summons on 11<sup>th</sup> August, 2016 under Order 21 Rule 99 of the Code of Civil Procedure. The said Chamber Summons is pending. In between, Notice of Motion No. 2451 of 2016 was moved by the respondent no. 1/decree holder as a contempt committed by the appellants/third party. By way of interim order, in the said Notice of Motion, the learned Judge has directed the respondents to remove their lock from the suit flat within 7 days from the date of the order and permitted the decree holder to enter the flat, as he was already put in possession on 6<sup>th</sup> August, 2016. Other consequential orders were passed.

4. I have heard the submissions of learned counsel for both the sides. Perused the documents which are produced and relied by the learned counsel for the appellants. At the outset, it appears that the appellants have in fact put their lock after possession was taken by the bailiff and handed over it to the decree holder on 6<sup>th</sup> August, 2016. The submissions were made by the learned counsel for the appellants that the order of possession warrant and execution of the possession warrant under Rule 35 Order 21 of the Code of Civil Procedure was obtained by suppressing the fact of his resistance before the Executing Court can be appreciated at the time of hearing of the Chamber Summons finally. The fact remains that on 6<sup>th</sup> August, 2016 though the Court bailiff has handed over the possession to the decree holder, it was forcibly taken over by the appellant no. 1 by putting her lock. Thus, there is *prima facie* contempt of the order of the Court and hence, following order is passed:

- (i) The order passed by the trial Court is not interfered with.
- (ii) The possession of the suit flat is to be restored back on 16<sup>th</sup> August, 2017 at on or before 12 noon by removing the lock put by the appellants, as the possession was handed over by the bailiff to the decree holder on 6<sup>th</sup>

August, 2016.

- (iii) All other contentions of the appellants in respect of suppressing of fact of their rights in suit property are open and to be dealt with by the Executing Court while dealing with the Application made under Rule 99 Order 21 of the Code of Civil Procedure.
- (iv) Parties to appear before the Executing Court and cooperate, so that Executing Court may proceed.

5. Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

**(MRIDULA BHATKAR, J.)**