

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 895 OF 2018

OSMANALI HUSSAINALI KAZI AND OTHERS  
VERSUS  
SADIQUALI AHMADALI KAZI AND ANOTHER

Advocate for Petitioners : Shri M.L. Dharashive.  
Advocate for Respondent No. 1 : Shri G.R. Syed.

CORAM : RAVINDRA V. GHUGE, J.  
Dated : 29<sup>th</sup> January, 2018

PER COURT :

1. The petitioners/judgment debtors are aggrieved by the order dated 04/12/2017, passed by the Executing Court, which reads as under :

“(i) The Application is allowed.

(ii) The Assistant Superintendent-2 of this court is hereby appointed as Court Commissioner to execute sale-deed, in favour of Decree Holder namely Sadiqali Ahmadali Kazi in respect of suit properties i.e. eastern side 1H 17R land in Survey No. Survey No.39/C, eastern side 1H 27R land in Survey No. Survey No. 40/C and eastern side 1H 76 R land in Survey No. Survey No.54/C within one month from today.

(iii) The Assistant Superintendent-2 of this court shall submit compliance report of this order.

(iv) Decree Holder shall deposit Commissioner fee and

necessary charges for the purpose of the execution of sale deed, as per rule.”

2. I have considered the strenuous submissions of the learned advocates for the petitioners and respondent No. 1.

3. There is no dispute that by the judgment and decree of the Trial Court dated 18/11/2014 delivered in R.C.S. No. 54/2012, the suit has been decreed in favour of respondent No. 1. It is also undisputed that the petitioners/original defendants moved Civil Miscellaneous Application No. 179/2016, for condonation of delay in filing a Regular Civil Appeal and the said application is pending adjudication. It is informed that the litigation sides have advanced submissions on the condonation of delay application and the same is posted on 05/02/2018, for passing orders. It requires no debate that if the delay of 567 days is condoned, the Regular Civil Appeal would be taken up for adjudication.

4. Learned counsel for the decree holder submits that the Trial Court has appointed the Assistant Superintendent-2 as a Court Commissioner to execute a sale deed. Application for issuance of possession warrant is pending and the petitioners have not yet filed their reply to the said application. Adjudication on the said

application is bound to take some time.

5. Considering the above, I do not find that this petition needs to be kept pending and the same, is therefore, disposed of with a direction to the learned Appellate Court to decide Civil Miscellaneous Application No. 179/2016, as expeditiously as possible and pass an order on/or before 14/02/2018, keeping in view that the application for issuance of summons filed by the decree holder is posted before the Executing Court on 15/02/2018 for hearing.

( RAVINDRA V. GHUGE, J. )

S.P.C.