

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

CIVIL REVISION APPLICATION NO. 422 OF 2017

Smt. Ausabai Yashwant Jangam & Anr. Applicants

Versus

Shri Dattatray Pandurang Patil & Ors. Respondents

Mr. Pandit Kasar for Applicants.
Mr. Jaydeep Deo for Respondent No.4.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.
DATE : 20TH MARCH 2018**

P.C.

. Heard learned Counsel for the Applicants and Respondent No.4.

2. By this Revision Application filed under Section 115 of the Code of Civil Procedure, the Applicants are challenging the order dated 13th April 2017 passed by 18th Civil Judge Junior Division, Pune in Regular Darkhast No. 163 of 1971. By the said order, the trial court has disposed of total three applications. The first application at Exh. 106 was filed by the present Applicant who is Judgment Debtor No.2 before the executing court to call back the possession warrant and application Exh.

105 was filed by the present Applicant with a prayer to allow him to lead evidence, whereas application Exh. 109 was filed by the Respondent No.4 – Decree Holder for police protection and execution of possession warrant by breaking the lock as per Order 21 Rule 35 of the Code of Civil Procedure.

3. The trial court vide its impugned order has rejected the applications Exh.105 and 106 which were filed by the present Applicant, whereas allowed the application at Exh.109 which was filed by the Respondent No.4 – Decree Holder.

4. As a result thereof, the possession warrant is already executed and Decree Holder has obtained possession of the house property. In view thereof, so far as the challenge to the order passed below Exh.109 is concerned, it has become infructuous.

5. Now the only question remains as to the order passed by the executing court below Exh.105. Application Exh.106 also goes in view of the possession warrant being executed, therefore, the only application remains for consideration is Exh.105 which is filed by the Applicant to allow him to lead evidence on the ground that in execution of the possession decree, the possession handed over is of the different property in which Applicant is having tenancy right, and therefore, in order to enable him to prove this contention, the Applicant may be granted permission to lead evidence. However, it is pointed out by the learned Counsel for Respondent that Petitioner has already filed suit bearing No. 191 of 2017 in the Small Causes Court.

6. In view thereof, it is not necessary to consider the prayer made in the application at Exh.105. The said prayer will be decided in the suit in accordance with law. Hence, the said application is dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]