

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

CIVIL REVISION APPLICATION NO. 455 OF 2016

Mr.Kadir Ilahi Bagwan	]	
Aged : 46 years, Occ. Business,	]	
R/o. 398, Raviwar Peth, Karad,	]	
Tal. Karad, District Satara.	]	... <u>Applicant.</u>

V/s.

Mrs.Usha Anandrao Yadav	]	
Aged : 56 years, Occ. Agriculture	]	
R/o. 324, Suryavanshi Mala,	]	
Karad, Tal. Karad, District Satara.	]	... <u>Respondent.</u>

- Mr.N.V. Bandiwadekar a/w. Mr.V.R. Kumbhar i/b. Mr.Sagar A. Mane for the Applicant.
- Mr.Mahindra B. Deshmukh for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 23rd MARCH, 2018.

PRONOUNCED ON : 5th APRIL, 2018.

JUDGMENT :

1] Heard learned counsel for both the parties.

2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure, 1908 (*for short hereinafter referred to as, "C.P.C."*) the Applicant is challenging the judgment and order dated

25th July 2016 passed by the Civil Judge Senior Division, Karad, thereby decreeing the Summary Civil Suit No.02 of 2015 filed by the Respondent under Section 6 of the Specific Relief Act, 1963.

3] The facts of the Civil Revision Application are to the effect that the suit property is a residential house, which was owned and possessed by the Respondent-Plaintiff since last more than 20 years. It was mortgaged to Sahyadri Nagari Sahkari Patsanstha, Karad (*for short hereinafter referred to as, "the Patsanstha"*) by the Respondent on 29th December 1995. As the loan could not be repaid, the said Patsanstha sold the suit property in auction on 31st May 2005. The Applicant, herein, purchased the suit house in the auction and the 'Sale Certificate' also came to be issued in the name of the Applicant on 23rd June 2005. Accordingly, the registered sale-deed was executed in favour of the Applicant by the Patsanstha on 20th August 2010.

4] On 12th April 2015, the Applicant along with the Recovery Officer of the Patsanstha came to the suit property with requisite police force and called upon the Respondent to vacate the possession of the suit premises. As per the case of the Applicant, the Respondent voluntarily handed over the possession of the suit premises to the Recovery Officer, the Recovery Officer put the Applicant in possession of the suit premises and possession receipt also came to be executed

accordingly. Whereas, according to the Respondent, she was forcibly dispossessed by the Applicant and the police from possession of the suit premises and her signatures were obtained on the papers, without informing her the contents thereof.

5] As a result, the Respondent filed this suit (Summary Civil Suit No.02 of 2015) before the trial Court on 10th July 2015 under Section 6 of the Specific Relief Act seeking restoration of possession of the suit premises, claiming to be dispossessed therefrom, without her consent and without following due procedure of law.

6] This suit came to be resisted by the Applicant contending *inter-alia* that he has purchased the suit property in the auction conducted by the Patsanstha. The Patsanstha had followed all the requisite procedure before putting the suit property for auction. The Patsanstha had obtained the Recovery Certificate No.1060 of 2014 dated 25th February 2004 from the Registrar of Co-operative Societies under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (*for short*, “Act”). The public notice of the auction was published in “Daily Tarun Bharat” on 3rd March 2005. The requisite Sale Certificate was also duly issued. The sale-deed was executed and thus the Applicant had become lawful owner of the suit property. The Respondent has no right to remain in possession thereof and hence,

being aware of this legal proceedings, Respondent has voluntarily given the possession of the suit property to the Recovery Officer. She has signed on the possession receipt and also the Kabjepawati which was prepared in the presence of panchas and thus, it was submitted that due procedure of law is followed while obtaining possession of the suit premises from the Respondent. Hence, the suit filed, after three months therefrom, raising the false grievance of forceful dispossession needs to be dismissed.

7] In support of their respective contentions, both the Applicant and Respondent, examined themselves and on appreciation of their evidence, the trial Court was pleased to hold that, as the Applicant has not approached the Civil Court for getting possession of the suit property and all of a sudden with the help of police dispossessed the Respondent therefrom, the possession of the suit property needs to be restored to the Respondent. Accordingly, the trial Court has decreed the suit.

8] While challenging this judgment and order of the trial Court, the submission of the learned counsel for the Applicant is that, whatever mode is prescribed under the Maharashtra Co-operative Societies Act, 1960, for executing the award passed by the Co-operative Court is followed in this case. It is the Recovery Officer who

has handed over the possession of the suit premises to the Applicant after following due procedure of law. Hence, there is no question of the Petitioner dispossessing the Respondent without following due procedure of law. Further, it is submitted that there is absolutely no evidence to show that any obstruction was raised by the Respondent, at the time of vacating the possession. Even, the suit is also filed three months after the delivery of the possession and thus, it is clearly an afterthought. The Recovery Officer of the Patsanstha, who has put the Petitioner in possession of the suit premises is also not joined in the suit. Hence, according to him, the trial Court has committed an error and illegality in decreeing such suit.

9] Per contra, learned counsel for the Respondent has supported the impugned judgment and order of the trial Court by submitting that, when, with the help of the police, the possession of the suit premises is obtained, it goes without saying that the due procedure of law was not followed. Secondly, it is submitted that, as it is the Applicant who is in possession of the suit premises, the Recovery Officer is not necessary party to the suit. Lastly, it is submitted by learned counsel for the Respondent that, within the limited scope of revisional jurisdiction, this Court should not interfere in the finding of fact recorded by the trial Court.

10] Undisputed facts on record are to the effect that, the Respondent has mortgaged the suit property with the Patsanstha for availing the loan facility; she failed to discharge the said loan, hence after obtaining the necessary Recovery Certificate from the Registrar, Co-operative Society, the suit property was put in auction. The Applicant has purchased the said property in auction; the sale certificate is executed in his favour. Not only that, even sale-deed is also executed in his favour. Hence, as regards the acquisition of ownership over the suit property by the Applicant, there is no dispute that the due procedure of law is followed and he has become the lawful owner thereof. As a owner the Applicant was also entitled to get possession of the suit premises.

11] However, the only question for consideration is, whether the Applicant could recover the possession of the suit property with the help of police and the Recovery Officer.

12] According to learned counsel for the Applicant, the Maharashtra Co-operative Societies Act and Rules framed thereunder clearly prescribe the procedure for the mode of execution of Recovery Certificate. In this case, that mode is followed. Moreover, it is not the Applicant, who has forcefully dispossessed the Respondent but it is

the Recovery Officer, who has, in pursuance of the Recovery Certificate and the sale-deed executed in favour of the Applicant, has delivered possession of the suit premises to the Applicant and therefore, there is no question of due procedure being not followed.

13] To substantiate this submission, learned counsel for the Applicant has relied upon the judgment of the Division Bench of this Court in the case of *Satguru Construction Co. Pvt. Ltd. & Ors. V/s. Gr. Bombay Co-operative Bank Ltd., 2007(3) Mh.L.J.*, wherein the proceedings were initiated by the Gr. Bombay Co-operative Bank Ltd. in terms of Rule 37 of Order 21 of Civil Procedure Code for execution of the Recovery Certificate. Therein, the warrant of arrest was issued by the Single Judge of this Court for non-compliance of the said liability. In the appeal, before the Division Bench, when this warrant of arrest was challenged, the question arose, as to, the jurisdiction of the Civil Court in respect of any dispute referred to the Co-operative Court or in execution proceedings arising there from. While answering this question, it was held that, Rule 107 of the Maharashtra Co-operative Societies Rules, 1961, makes elaborate provisions of law for attachment and sale as well as all the other modes for executing a recovery certificate issued under Section 101(1) or (2) of the said Act. It was also held that as the jurisdiction of the Civil Court is expressly

barred in view of Section 163 of the said Act and execution proceedings being in continuation of suit, it would not be open for the parties to adopt a mode different than the one specifically provided under the said Act and the said Rules. It was held by the Division Bench of this Court that, *“once the statutory provisions specifically provided the mode for execution of a Recovery Certificate and for recovery of dues in terms of such certificate, then it is not open for the parties to choose a totally different mode and ignore the mandate of Section 163 of the Act. The jurisdiction of the Civil Court clearly stands ousted in that regard”*.

14] In view of this dictum of law, the submission of learned counsel for the Applicant is that, if the jurisdiction of the Civil Court is barred, even in execution of the Recovery Certificate, then as the Applicant was entitled to get the possession of the suit property in execution of the Recovery Certificate, he had to approach the Recovery Officer and the Recovery Officer had accordingly delivered him the possession of the suit property. Therefore, it cannot be said that possession is received by the Applicant without following due process of law.

15] In my considered view, though this line of argument advanced by learned counsel for the Applicant is attractive and

persuasive, on closer scrutiny, it fails to ground. In the first place, Maharashtra Co-operative Societies Act and the Rules framed thereunder clearly prescribe the mode for recovery of possession of attached or sold property.

16] Section 156 (1) (2) of the Act lays down as follows:

“156. Registrar's powers to recover certain sums by attachment and sale of property –

(1) The Registrar or any officer subordinate to him empowered by him in this behalf [or an officer of such society as may be notified by the State Government, who is empowered by the Registrar in this behalf] may, subject to such rules as may be made by the State Government, but without prejudice, to any other mode of recovery provided by or under this Act, recover-

(a) any amount due under a decree or order of a Civil Court obtained by a society;

(b) any amount due under a decision, award or order of the Registrar, [Co-operative Court] or Liquidator or [Co-operative Appellate Court];

(c) any sum awarded by way of costs under this Act,

(d) any sum ordered to be paid under this Act as a contribution to the assets of the Society;

(e) any amount due under a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or under sub-section (1) of section 137;]

together with interest, if any, due on such amount or sum and the costs of process [according to the scales of fees laid down by the Registrar, from time to time,] by the attachment and sale or

by sale without attachment of the property of the person against whom such decree, decision, award or order has been obtained or passed.

(2) The Registrar or the officer empowered by him shall be deemed, when exercising the powers under the foregoing sub-section, or when passing any orders on any application made to him for such recovery, to the Civil Court for the purposes of [article 136 in the Schedule to the Limitation Act, 1963.].”

17] Rule 107 of the Rules framed under the said Act lays down the procedure for attachment and sale of property under Section 156 of the Act. Sub Rule 1 to 9 of Rule 107 provides detail procedure for attachment and sale of movable property; whereas from Sub-Rule 10 onwards, the detail procedure is laid down in respect of attachment and sale of immovable property.

18] Rule 10 lays down that :

“(10) Immovable property shall not be sold in execution of a decree unless such property has been previously attached:

Provided that where the decree has been obtained on the basis of a mortgage of such property, it shall not be necessary to attach it.”

19] In this case, as the suit property was mortgaged to the Patsanstha, in view of Proviso to Rule-10, it was not necessary to

attach the suit property and it has been directly sold in auction.

20] Rule 11(a) to (d) then deal with the procedure relating to attachment and sale, or sale without attachment of immovable property.

21] Rule 11(d-1) onwards are material for our purposes as they deal with taking over possession of immovable property. They are inserted by Government Notification dated 30th August 2014 and they read as follows:

“(d-1)(i) No sale of immovable property under these rules shall take place unless possession of the property is taken or caused to be taken.

(ii) For sale of attached immovable property, the Recovery officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Form “Z” to these rules, to the judgment debtor and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(iii) The possession notice as referred to in sub-rule (2) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the Recovery officer.

(iv) In the event of possession of immovable property is taken by the Recovery officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under

the similar circumstances, take care of such property.

(v) The Recovery officer shall take steps for preservation and protection of such property and insure it, if necessary, till it is sold or otherwise disposed of.

(vi) (a) Where the possession of the any property is required to be taken by the Recovery Officer under the provisions of this rule, the Recovery Officer may, for the purpose of taking possession, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such property is situate to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him take possession of such property and forward such property to the Recovery Officer.

(b) For the purpose of securing compliance of this sub-rule, the Chief Metropolitan Magistrate or the District Magistrate, may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(c) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this sub-rule shall be questioned in any court or before any authority.”

22] Thus, it follows that when a clear procedure is laid down in the Act and Rules, as per these Rules, only the possession of the suit property was required to be taken before its sale. Assuming that, in this case, the sale has taken place before these Rules were inserted, at least as regards taking over possession of the suit property, the

procedure prescribed in these Rules was required to be followed as possession is taken over from Respondent on 12th April 2015, after the Rules came in to effect.

23] Thus, when the statutory provisions contained in the Act and Rules clearly prescribe a particular mode to be adopted for delivery of possession of the property to the purchaser, as held in the above said authority of *Satguru Construction Co. Pvt. Ltd. & Ors. (supra)*, it would not be open for the parties to take the law in own hands for obtaining the possession. It would be amounting to ignoring the mandate of Section 163 of the said Act. Neither the Recovery Officer nor the Applicant-auction purchaser can take the law in their hands and with the help of police dispossess the Respondent from the suit premises. Even otherwise also, mere acquisition of ownership or title over the suit property does not entitle the Applicant or the purchaser to dispossess the person who is in possession of the suit property, without following the due procedure of law, like, filing of suit based on title. Neither the Applicant nor the Recovery Officer, has followed even this procedure also and all of a sudden went to the house of the Respondent and asked her to vacate the suit property, which is totally against the due process of law. Whether she has raised obstruction or otherwise, and whether she was really in a position to

obstruct the Applicant in the presence of the police force, is not a relevant consideration, as it cannot be a mode at all to recover the possession of the purchased premises.

24] It is also significant to note that the sale-deed which is executed on behalf of the Respondent by the Recovery Officer is also silent as to the possession being delivered to the Applicant. It merely transfers the ownership but does not state a single word about the delivery of possession. Therefore, the Applicant, who has purchased the suit property, in the auction, otherwise was also fully aware that he has purchased the suit property, which was in possession of the Respondent and the purchase price was also accordingly fixed. Hence, it follows that the Applicant has to take the necessary requisite steps to obtain such possession, by following due process of law.

25] Surprisingly, in this case, neither the Applicant nor the Recovery Officer has taken such steps. Significantly, the Recovery Certificate is issued on 31st May 2005, the Sale Certificate is issued on 23rd June 2005, the Sale-deed is thereafter 5 years executed on 20th August 2010 and then, all of a sudden on 12th April 2015, the Applicant and the Recovery Officer had gone to the house of the Respondent with police bandobast to take over the possession, without giving her any prior notice. Whatever notice was given, it was just on

that day itself.

26] In such situation, relying merely on the averments in the panchanama and kabjepawati that she had removed her belongings from the suit property voluntarily or without raising any protest or obstruction cannot legitimize this process of delivery of possession. As per the evidence of Respondent, her signatures were obtained on kabjepawati without informing her the contents thereof. The Applicant has not examined any of the witnesses to the said panchanama or the Recovery Officer to show that she was made aware about the contents of the panchanama. In this situation, merely because she has filed this suit after three months, does not mean that she had delivered the possession with her consent and accord.

27] Thus, as the Applicant has not followed the statutory procedure prescribed under the Rule-107 (11)(d-1) of the Act nor followed the procedure laid down under the Civil Law of filing a suit based on title for getting possession of the suit property from the Respondent, it has to be held that, Respondent is dispossessed from the suit property without following due procedure of law and hence she is entitled to get restoration of possession as per Section 6 of the Specific Relief Act.

28] As regards the contention of learned counsel for the Applicant that the Recovery Officer was a necessary party to the suit as he has delivered the possession of the suit property to the Applicant and for his non-joinder suit is not maintainable, learned counsel for the Respondent has rightly placed reliance on the judgment of the Gujrat High Court, in the case of, *Dabgar Arvindkumar Keshavlal V/s. Shri Modh Ghanel Gnyati Samaj*, AIR 1995 Gujrat 148, wherein the similar contention was raised and it was held in paragraph No.6 and 7 as follows:

"6. The suit was filed by the Applicants for recovery of possession under [section 6\(1\) of the specific relief act, 1963](#) which reads as under:--

"If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit."

7. On plain reading of the said provision it becomes clear that cause of action for suit arises when any person is dispossessed without his consent of immovable property otherwise than in due course of law. The relief that can be claimed in such a suit is of recovery of possession. This would mean that person who is in possession of such immovable property of which the plaintiff was dispossessed without his consent and otherwise than in due course of law would be a necessary party to the suit for claiming the relief effectively. If persons who have dispossessed are in possession of the property in question, they would obviously be necessary parties for recovery of possession in a

suit under Section 6 of the Act. However, if dispossession is done through the agency of some persons who have passed on the possession to other persons, the latter being in actual possession from whom recovery can be sought, would be necessary parties for claiming an effective relief under Section 6 of the Act. The suit filed against those who are in actual possession for recovery of the immovable property under Section 6 of the Act can be effectively decided even in absence of the agents who have dispossessed plaintiff and transmitted the possession to the defendants. Therefore, the approach of the trial Court that in absence of the persons, who had dispossessed the plaintiffs having been made parties to the suit, the relief under Section 6 could not be granted against those who are actually in possession of that property is wholly misconceived and not warranted by the provisions of Section 6 of the said Act. in **Virjivandas Madhavdas v. Mohammed Ali Khan**, reported in **ILR 5 Bom 208**, the Bombay High Court in context of section 9 of the specific relief act, 1877 held that a person who has been ejected from his property in suing to recover it under section 9 of the specific relief act, 1877, may sue the actual ejector or the person under whose order or by whose authority the actual ejector had acted, or he may sue both; but the wrong doer who has taken possession is the one from whom primarily it is to be reclaimed. Therefore a suit filed against persons from whom possession is to be primarily reclaimed under Section 6 of the said Act can be decided notwithstanding that those who had actually dispossessed the plaintiffs were not made parties to the suit.”

(emphasis supplied)

29] In the present case also, therefore, as it is the Applicant who is in actual possession of the suit property, the suit filed against him alone, without joining the agency of Recovery Officer from whom he has received the said possession, is definitely maintainable.

30] The impugned judgment and order of the trial Court therefore, restoring the possession of the suit premises to the Respondent being just, legal and correct, it does not call for any interference in the revisional jurisdiction of this Court.

31] This Civil Revision Application therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

32] At this stage, learned counsel for the Applicant seeks continuation of the interim relief, which was granted by this Court at the time of entertaining the Civil Revision Application, in order to enable the Applicant, to approach the Hon'ble Supreme Court. Learned counsel for the Respondent takes objection thereto.

33] However, in the interest of justice, the earlier order of the interim relief, is extended for a period of six weeks from today, with an understanding that no further extension will be granted.

[DR.SHALINI PHANSALKAR-JOSHI, J.]