

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10353 OF 2017

Mohamed Gulam Roshan	 Petitioner
V/s.	
Dayaram Dulichand Ahir & Anr.	 Respondents

Mr. Pradeep J. Thorat for the Petitioner.

Ms. Asha Chetan Shah for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND FEBRUARY 2018.

P.C. :

1. Heard Mr. Thorat, learned counsel for the Petitioner, and Ms. Shah, learned counsel for the Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 23rd August 2017 passed by the City Civil Court, Bombay, on the Draft Notice of Motion taken out by the Petitioner in Short Cause Suit No.1885 of 2017.

3. By the said Draft Notice of Motion, the Petitioner has sought the relief of restoration of possession of the suit premises, or, in the alternate, appointment of the 'Court Receiver', under Order XL Rule 1 of the Civil Procedure Code, 1908.

4. Perusal of the impugned order passed by the Trial Court reveals that, the Trial Court has not considered any of these prayers and simplicitor, because the learned counsel for the Respondents has submitted that the Respondents will not part with possession or create third party interest in respect of the suit property, given direction to that effect till the Draft Notice of Motion is finally decided.

5. Thus, it is clear that the Draft Notice of Motion is yet not finally decided. Even the Respondents have not filed their affidavit for resisting the said Draft Notice of Motion. In view thereof, the matter is required to be sent back to the Trial Court itself for deciding the Draft Notice of Motion in accordance with law.

6. Considering the fact of earlier litigation showing that the Petitioner was put in possession of the suit premises, the Trial Court is directed to decide the Draft Notice of Motion, in accordance with law, as expeditiously as possible and within a period of four weeks from the receipt of the order of this Court, after giving an opportunity of hearing to both the parties.

7. Writ Petition is disposed of in the above terms.

8. Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]