

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3035 OF 2017
IN
WRIT PETITION NO. 2825 OF 2017

M/s. Shree Tirthankar Co.	..	Applicant
In the matter between		
Dr. Ashok R. Mehta	..	Petitioner
vs.		
M/s. Shree Tirthankar Co.	...	Respondent

Mr. Sameer Bhalekar for the Applicants/Org. Respondents.
Mr. H.S. Thakkar for the original Petitioner.

CORAM : M. S. SONAK, J.
DATE : 28 MARCH 2018.

P.C. :-

1] This application seeks modification of the order dated 5th October 2007.

2] Mr. Bhalekar, learned counsel for the applicant (original respondent) submits that as on the date when the order dated 5th October 2017 was made, the decree made by the Small Causes Court had already been executed. He points out that the obstructionists proceedings were pending on the said date and are pending even today. He submits that for this reason, the operative portion in paragraph 14 (e), 14 (f) and 14 (g) needs to be modified.

3] Mr. H.S. Thakkar, learned counsel for the original petitioner, who is impleaded as the respondent in this civil application, submits that the execution is not complete because, as yet, the applicant had not recovered the possession of the suit premises. He submits that it is the tenants of the original petitioner, who are in possession of the suit premises and it is they who have taken out/are defending obstructionists proceedings. On this ground Mr. Thakkar submits that there is no case made out for modification.

4] The issue as to whether the execution is complete or not is a disputed issue. However, even Mr. Bhalekar admits that as yet, the applicant had not been able to secure the possession of the suit premises. Thus construed, there is no case made out for modification.

5] Besides, there is yet another circumstance which is required to be taken note of. The interim relief for stay of the execution of the impugned decree in terms of clause 14(e) of the order was to operate only for a period of six weeks from the date of the order. Six weeks period has long expired. Thereafter, in terms of paragraph 14(f), the original petitioner was given liberty to deposit the amount

of costs and thereafter apply to the appeal court for interim relief. Mr. Thakkar submits that the costs have been deposited and the application for interim relief has also been made.

6] If this is so, then, it is for the appeal court to hear and decide the application for interim relief so made. All contentions of all parties, including, the contention of the applicant herein that the execution is already complete, are kept open for decision of the appeal court. The appeal court to dispose of such application for interim relief, on its own merits and in accordance with law.

7] This application is disposed of in the aforesaid terms. There shall be no order as to costs.

8] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)