

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 274 OF 2019**

1. Mrs. Santaninha Barreto (since deceased through her legal representatives)
- a. Mrs. Alvisa Barreto e Rodrigues, daughter of Milagres Barreto, married and her husband,
- b. Mr. James Rodrigues, major of age, married,
Both residing at Near New Municipal Garden, Opp. Lakaki Laundry, Panaji-Goa.
- c. Mr. Carlos Barreto, son of Milagre J.S. Barreto, major of age, Indian National, and his wife,
- d. Mrs. Joyce Barreto, major of age, Indian National,
Resident of Casa Barreto, Near New Municipal Garden, Opp. Lakaki Laundry, Panaji-Goa.
- e. Mr. Jose Ivo Gregorio Barreto, son of Milagre J.S. Barreto, married to
- f. Mrs. Erminda Barreto,
Both resident of Neomi's Beauty Parlour, 1st floor, Navelkar Legend, Dempe College, Tonca, Miramar, Panaji-Goa.

.... Petitioners

Versus

1. Mrs. Gulabi Somdas Naik, major of age, resident of H. No. 157/1, Vollant, Betim, Bardez, Goa.

.... Respondent

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Bernard Fernandes, Advocate for the Petitioners.

Mr. John Abreu Lobo, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 11th JUNE, 2019.

PRONOUNCED ON: 9th JULY, 2019.

ORAL ORDER:

The challenge in this petition, at the instance of the petitioners-decree holders is to the order dated 25.07.2018 (below Exhibit-18), passed by the Executing Court in Regular Execution No. 18/2015/B. By the impugned order, application (Exhibit-18), filed by the respondent-judgment debtor is partly allowed, directing the Court Bailiff, Shri Atmaram Sawant to make himself available for examination as to the manner in which the warrant of possession (Exhibit-23) is executed.

2. The brief facts necessary for the disposal of the petition may be stated thus:

Late Santaninha Barreto, the predecessor of the petitioners had filed an application for eviction against the respondent and her husband Somdas alias Somnath Naik. This was somewhere in the year 2006. The eviction was sought under Section 22(2)(a)(e) and 23(a)(i)(ii) of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (Act, for short). Subsequently, the ground under Section 22(2)(g) of the Act was also added.

3. The learned Rent Controller, by an order dated 24.04.2010 found that the respondent had denied the title of the original applicant as landlord and the said denial of title was not bonafide. The learned Rent Controller, therefore, directed eviction of the respondent under Section 22(2)(g) of the Act. That order was confirmed by the learned District Judge in Rent Appeal No. 88/2013, vide judgment and order dated 17.10.2014 and thereafter, by this Court in Writ Petition No. 51/2015, which was dismissed on 13.03.2015. This Court found that the only indulgence that can be shown to the respondents (petitioners in that petition) is to grant her some time to vacate. This Court accordingly granted a period of six months to the respondent to vacate the suit premises. This Court, directed that the respondent shall not be evicted for a period of six months, subject to the respondent filing an undertaking, within a period of three weeks, along with affidavit of all adult members of the family residing with her, before this Court, that they will not create any third party interest and shall hand over peaceful possession of the suit premises to the petitioners. It was further directed that if such an undertaking is not filed, within three weeks, the order of eviction can be executed. The petitioners did not file any such affidavit.

4. The petitioners challenged the order dated 13.03.2015, before the Hon'ble Supreme Court in Special Leave to Appeal No. 15809/2015, which was dismissed on 08.07.2015, in the following terms:

"We see no reason to interfere with the impugned order. The special leave petition is accordingly dismissed.

This order shall not however prevent the petitioner from claiming any redress in appropriate proceedings before the appropriate Forum after surrender of possession of the property to the landlord pursuant to the decree for eviction passed against him".

5. Thereafter, the petitioners filed the aforesaid execution application for execution of the order of eviction. The respondent filed application dated 13.01.2016, *inter alia* for framing of issue of mundkarship and for reference of the said issue to the competent Authority, although, the said defence raised was negatived by the learned District Judge and by this Court and the respondent having made an unsuccessful attempt to challenge the same before the Hon'ble Supreme Court.

6. The petitioners filed a reply to the objection and the learned Executing Court by an order dated 21.09.2016

dismissed the objection. Subsequently, a warrant of possession came to be issued on 21.11.2016 and in execution of the said warrant of possession, the suit premises have been handed over to the petitioners on 06.12.2016. It may be mentioned that the learned Executing Court had granted police protection, if required, for the execution of the possession warrant. Normally this should have been the end of the long drawn litigation between the parties. However, the respondent persisted and filed an application on 08.12.2016 (Exhibit-18) for the following reliefs:

a) to appoint a Court Commissioner to conduct an inquiry with regard to the manner in which the warrant of possession was handled by the bailiff of this Court, Mr. Sawant.

b) to quash and set aside the warrant of possession dated 21.11.2016 and to restore possession of the suit premises to the Judgment Debtor.

7. That application was opposed on behalf of the petitioners as being misconceived and in gross abuse of the process of the Court.

8. The learned Executing Court has partly allowed the application, directing the Court Bailiff, Shri Atmaram Sawant to make himself available for examination as to the manner in which the warrant of possession was executed. It is this order, which is subject matter of challenge in this petition.

9. I have heard Mr. Coelho Pereira, the learned Senior Counsel for the petitioners and Mr. Lobo, the learned Counsel for the respondent. Perused record.

10. It is submitted by Mr. Coelho Pereira, the learned Senior Counsel for the petitioners that the Executing Court was in error in directing the Bailiff to remain present for execution, when the warrant was executed in accordance with law and the possession was handed over to the petitioners. It is submitted that on her own saying, the respondent claims to have peacefully walked out of the house, when the Bailiff went to execute the warrant. Thus, no case for further inquiry is made out, as to the manner in which the warrant is executed. The learned Senior Counsel was at pains to point out that the objection filed by the respondent, purportedly under Section 47 of CPC, was in gross abuse of the process of the Court and in contravention of the order of the Hon'ble Supreme Court, which

directed the respondent to first deliver possession. It is submitted that the application Exhibit-18 is not bonafide and is made only to prolong the litigation.

11. Mr. Lobo, the learned Counsel for the respondent has supported the impugned order. It is submitted that the warrant was not executed in accordance with law and there were some belongings of the respondent in the house and therefore, an inquiry is warranted. It is submitted that the copy of the warrant or any other order was not served on the respondent, before the execution of the warrant, which is also in breach of Order XXI Rule 35 of CPC.

12. I have considered the submissions made. A perusal of the application Exhibit-18 shows that the respondent had prayed for appointment of a Court Commissioner for conduction of an inquiry with regard to the manner in which the warrant of possession was "handled" by the Bailiff and secondly, for restoration of possession. The later prayer has not been granted by the Executing Court. Thus, it is difficult to see as to what object would be served by holding an inquiry by examination of the Bailiff.

13. It is significant to note that on her own saying, the respondent left the suit premises on her own accord, although, she claims that she did so “in order to avoid law and order situation”. The fact remains that the respondent appears to have delivered the possession peacefully in execution of the warrant without any objection or resistance whatsoever. In order to ascertain the manner in which the warrant was served, a copy of the Bailiff report was called for and the Bailiff has given the following report:

“This is to certify that as per the order of this Court I have given the vacant possession of the suit structure after evicting the JD with the police protection to the D.Holder Mr. Jose Ivo Gregorio Barreto and obtained his signature on the original in the present of his Advocate Shri W. Braganza. Thus I executed the warrant by giving possession to the D.Holder”.

14. It would thus appear that the report of the Bailiff is in consonance with the fact that the respondent walked out of the house when the Bailiff came to execute the warrant. The respondent had a long drawn legal battle with the petitioners and ought to be aware of the orders passed pertaining to the execution of the order of eviction. It may not be out of place to mention that although, this Court had granted six months time,

subject to the respondent furnishing an affidavit, no such affidavit was furnished. The order passed by the Hon'ble Supreme Court would also indicate that the respondent was free to take any redress in appropriate proceedings before the appropriate Forum only after surrendering possession of the suit house. Thus, even as per the order passed by the Hon'ble Supreme Court, the respondent was under an obligation to surrender the possession.

15. Although, the respondent has claimed that there were certain belongings in the house, no details of any such belongings or inventory has been set out in the application nor it appears from the report of the Bailiff. It appears that no reference to the belongings in the house was made to the Bailiff. At the cost of repetition, it needs to be stressed that the respondent's own case is that she left the suit premises when the Bailiff had gone to execute the warrant. Thus, it is difficult to accept that there were any belongings in the suit house. At any rate, I do not see any purpose, whatsoever, for examination of the Bailiff in the given facts and circumstances of the case. I am conscious of the fact that normally, this Court would be slow in interfering with an order, which merely directs an inquiry. However, this is a case where in my considered view, the

application Exhibit-18 is not bonafide and no purpose would be served by examination of the Bailiff as directed by the Executing Court.

In that view of the matter, the petition is allowed. The impugned order is hereby set aside. The application Exhibit-18 is hereby dismissed. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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