

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1132 OF 2018

Manaji Shridhar Langote

...Petitioner

vs.

Eknath Dada Kolekar and Ors.

...Respondents

Mr. D.W. Bhosale, for the Petitioner

Mr. P.G. Chavan, for Respondent Nos. 2 to 4

CORAM : M. S. SONAK, J.

DATE : APRIL 08, 2019

P.C.:

. Heard Mr. Bhosale, learned counsel for the Petitioner and Mr. Chavan, learned counsel for the Respondents.

2. The challenge in this Petition is to the order dated 7th November, 2017 made by the Appeal Court. The operative portion of the impugned order read thus:

*“Application is allowed.
The execution of the judgment and decree in RCS
No. 499/2011 dated 31-07-2014 is hereby
stayed till decision of appeal.
Hearing of appeal is hereby expedited”.*

3. Mr. Bhosale, the learned counsel for the Petitioner submits that before the impugned order was made, the Petitioner had

already filed an application before the execution Court to permit the Petitioner to put fencing around the suit property. He submits that once this has done, the Appeal Court ought not to have made the impugned order. In the alternate, he submits that there is nuisance caused to the suit property and therefore the Petitioner should be permitted to fence the suit property subject to the decision in the Appeal. He submits that if ultimately the Appeal is decided in favour of the Respondents, the Petitioner will pull out the fencing at his own cost and without claiming any equity. Mr. Bhosale points out that the learned Appeal Judge had himself kept in abeyance the impugned order dated 7th November, 2017 for a period of 30 days. Thereafter, this order was instituted by this Court on 6th December, 2017. This order was thereafter extended from time to time.

4. Mr. Chavan, learned counsel for the Respondents defends the impugned order on the basis of reasoning reflected therein. Mr. Chavan submits that once the execution of the decree is stayed, there is no question of execution proceeding or the Petitioner being allowed to fence the suit property. He submits that if such relief is granted, the entire Appeal will be referred infructuous.

5. According to me, there is absolutely no error in the impugned order dated 7th November, 2017. The impugned order states the reasons as to why the execution was being stayed. The impugned order has been made in First Appeal which is virtually an Appeal as a matter of right. Routinely, such decrees are stayed. Besides, it was the contention of the Respondents that on the basis of impugned judgment and decree, the Petitioner herein was trying to dispossess the Respondents. After appreciating all this, the execution of the impugned decree came to be stayed. There is absolutely no jurisdictional error.

6. The Appeal Court was also not justified in keeping his own order dated 7th November, 2017 in abeyance for a period of 30 days. Such requests are to be entertained only when irreversible consequences are to follow. For example if the Appeal Court makes an order evicting the party or for demolition of structure, then such orders can be kept in abeyance. However, in this case, the Appeal Court had only stayed the execution of decree. Keeping such order in abeyance would mean that the party against whom such order is made can proceed with the execution or even proceed to interfere with the suit property, even though the Appeal Court has come to

the conclusion that the it deserves to be protected.

7. Mr. Bhosale however points out that this order is continued by this Court initially on 6th December, 2017. The order dated 6th December, 2017 read thus:

1 Not on board. Upon mentioning taken on board and order is passed on praecipe.

2 It appears that the Appellate Court has allowed the Civil Appeal No. 128 of 2014. However, the impugned order dated 7/11/2017 has been kept in abeyance for 30 days from 7/11/2017.

3 Issue notice to respondents returnable on 24/1/2018. The Petitioner shall file spare copies on or before 15/12/2017.

4 The order dated 7/11/2017 staying the impugned order shall continue till 24/1/2018.

8. From the aforesaid, it is clear that this Petition was mentioned by Mr. Bhosale when it was not on board by taking out the praecipe. At that stage, it was pointed out that the impugned order has been kept in abeyance for 30 days from 7th November, 2017. It is in this situation, the matter was posted on 24th January, 2018 and in the meanwhile, the order made by the Appeal Court was continued. At the stage of mentioning, this Court usually believes upon the statements which are made by the learned counsel for the parties, since it is really not possible to go into great details of the matter, at that stage. Therefore, the Petitioner

cannot draw any premium from the fact that the order made by the Appeal Court was continued from time to time.

9. The Petitioner's prayer that he be permitted to erect fencing around the suit property, even though the execution of decree is stayed, is entirely misconceived. In this manner, the Petitioner cannot insist upon acting in defiance of the said order dated 17th November, 2017 or virtually altering the status qua pending the approval.

10. This Petition is misconceived and therefore dismissed.

11. Although the Petitioner should required to pay costs, no costs are imposed in this matter on this occasion.

(M. S. SONAK, J.)