

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.2310 OF 2019
WITH
CIVIL APPLICATION [STAMP] NO.16022 OF 2019

Tejsingh M. Baid	]	Petitioner
Vs.		
Bijaysingh M. Baid and others.	]	Respondents

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Mr. Puneet Chaturvedi i/b Induprakash K. Tripathi, Advocate for the Petitioner.

Mr. R.B. Singhvi i/b Lex Services, for Respondent No.1.

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CORAM : R.G. KETKAR, J.

DATE : 13th JUNE, 2019.

P.C:

Heard Mr. Chaturvedi, learned Counsel for the petitioner and Mr. Singhvi, learned Counsel for respondent No.1, at length.

2. This Petition takes exception to the order dated 14th January, 2019 passed by the learned trial Judge below Exhibit 20 in Execution Application No.29 of 2016 arising from R.A.E. Suit No.5/15 of 1972. By that order, the learned trial Judge rejected the application taken out by the petitioner, herein for intervention in the execution proceeding.

3. The Petition was heard on 8th March, 2019. It was adjourned to 18th March, 2019. It is recorded that in the meantime, if the first respondent-decree holder executes the decree and obtains possession of the suit premises,

he will neither create third party interest nor part with possession. The Petition was thereafter heard on 16th April, 2019. On behalf of the petitioner, request was made for keeping the matter back and the matter was kept back. Even after lunch recess, request was made on behalf of the Advocate for the petitioner for keeping back the matter. On the other hand, Mr. Singhvi has tendered Bailiff report dated 15th April, 2019 which was taken on record and marked 'X' for identification. The Bailiff reported that at about 3.15 p.m on 15th April, 2019, he executed warrant of possession and has handed over possession to the first respondent.

4. In support of this Petition, Mr. Chaturvedi strenuously contended that in respect of the suit premises, the Court Receiver was appointed. He has invited my attention to the order dated 14th October, 1996 passed in Arbitration Petition No.180 of 1996 in Award No.208 of 1995. By that order, Interim Receiver appointed pursuant to the order dated 9th September, 1996 r/w order dated 13th September, 1996 in Interim Petition (L) No.198 of 1996 was continued as a Receiver in execution of the decree. He has also invited my attention to the order passed on 14th October, 1996 in Arbitration Petition No.180 of 1996 and in particular following portion which reads thus;

“Award AND THIS COURT DOTH LASTLY ORDER that the Interim Receiver appointed pursuant to the Order dated 9th September, 1996 read with order dated 13th September, 1996 in Interim Petition No.198 of 1996 be and is hereby continued as a Receiver in execution of the Decree”.

5. Mr. Chaturvedi submitted that respondent No.1 claims to have executed decree and obtained possession of the suit premises. He invited my attention to the decision in **Everest Coal Company (P) Ltd Vs. State of Bihar and others, (1978) 2 Supreme Court Cases 12** to contend that in the absence of the Court Receiver, respondent No.1 was not justified in taking possession of

the suit premises by executing the decree. He further submitted that the petitioner has taken out application on 10th June, 2019 for amending the Writ Petition so as to bring the Court Receiver on record as respondent No.7 and to add averments as per schedule annexed to the application.

6. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, the learned trial Judge rejected the application made by the petitioner for intervention in the execution proceedings. It is also evident from the Bailiff's Report that the decree is already executed on 15th April, 2019. In view thereof, the Petition is rendered infructuous and as such is disposed of. Liberty is reserved to the petitioner to agitate grievance against the execution of the decree as also contentions raised in this Petition. Order accordingly.

7. In view of disposal of the main Petition, Civil Application [Stamp] No.16022 of 2019 for amending the Writ Petition does not survive and as such is disposed of. The first respondent decree holder shall not create third party interest nor part with possession for a period of 8 weeks from today. It is made clear that continuation of ad-interim order shall not be construed as expression of merits either way. All contentions of the parties are expressly kept open.

[R.G. KETKAR, J.]