

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.1311 OF 2019
IN
WRIT PETITION NO.457 OF 1999
WITH
WRIT PETITION NO.457 OF 1999

Bhagatsingh s/o Sadhusingh Jina	]	
(since deceased)	]	
through H.L. Rs.	]	
Deepa Bhagatsingh Jina and others.	]	Applicants
Vs.		
Bhojraj Kanji Joshi alias Bandu Joshi	]	Respondent

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Mr. R.V. Desai, Senior Advocate a/w R.B. Pardeshi, Advocate for the Applicants/Petitioners.

Mr. Shishir Joshi i/b Manish Upadhyay, Advocate for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 10th JUNE, 2019.

P.C.

Heard Mr. Desai, learned Senior Counsel for the applicants and Mr. Joshi, learned Counsel for the respondent.

2. By this application, the applicants have prayed for modification of the order dated 26th April, 2019 passed by this Court in the main Petition. By order dated 26th April, 2019, the applicants were directed to remove perishable goods and medicines lying in the suit premises.

3. In support of this application, Mr. Desai has invited my attention to paragraph 6 of the application. In paragraph 6, it is asserted that applicant No.1 is 65 years old widow and staying with her several old aged health problems. She has no alternate accommodation for keeping the articles. He, therefore, submitted that as applicant No.1 has no alternate accommodation, order dated 26th April, 2019 directing her to remove medicines and perishable articles and clothes from the suit premises may be modified.

4. On the other hand, Mr. Joshi submitted in pursuance of the order dated 26th April, 2019, Mr. P.B. Gaikwad, Bailiff remained present on 3rd May, 2019 between 10.10 a.m and 11.00 a.m. At the time of his visit, suit premises was found locked and the respondent/plaintiff was present. He waited for the applicant till 11.00 a.m. The applicants, however, did not reach at the suit premises and, therefore, he could not comply the direction contained in the order dated 26th April, 2019. Report of the Bailiff is taken on record and marked 'X' for identification. Mr. Joshi further submitted that the plaintiff may be relieved from the undertaking given by him and recorded in the order dated 29th March, 2019.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Paragraph 2 of the order dated 26th April, 2019 reads thus;

“Mr. Desai submits that perishable articles are lying in the suit premises. The petitioner may be permitted to collect the articles. He assures that within one week from today, the petitioner will remove all the articles lying in the suit premises”.

A perusal of the above extracted portion clearly shows that submission was advanced on behalf of the applicants that perishable articles are lying in the

suit premises and permission may be given to them to collect the articles. Mr. Desai further assured that within one week, they will remove all the articles lying in the suit premises.

6. In view thereof, Mr. P.B. Gaikwad, Bailiff was appointed as Commissioner so as to facilitate removal of the articles by the applicants lying in the suit premises and preparing inventory of the articles in the presence of the parties. The Bailiff was to be paid Rs.5,000/- towards fees for commission work. The parties were to share expenses in equal proportion.

7. It is also evident from the material on record that the respondent/plaintiff has executed decree on 4th March, 2019. As the articles of the applicants were lying in the suit premises, submission was advanced on behalf of the applicants for collecting the articles lying therein. Despite giving assurance for collecting the articles lying therein within one week, the applicants failed and neglected to collect the articles. In fact, applicant No.1 is in contempt. Since, she is widow and is dispossessed, I do not feel it appropriate to initiate contempt proceedings against her.

8. In view of the peculiar facts and circumstances of the case, by order dated 29th March, 2019, I accepted the undertaking given by the respondent that in case, the applicants herein succeed in the main Petition without relegating them to file proceedings under section 144 of the Code of Civil Procedure, 1908, the plaintiff will restore possession of the suit premises to them. As applicant No.1 was dispossessed from the suit premises, the Petition was ordered to be listed for final hearing on 5th April, 2019 in the supplementary board.

9. After considering the material on record, I do not find that any case is made out for modification of the order dated 26th April, 2019. In view of the conduct of the applicant, direction of fixing Writ Petition for hearing stands recalled. Writ Petition to come up for final hearing in the regular course. Subject to this, application fails and the same is dismissed.

[R.G. KETKAR, J.]