

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION (ST.) NO.18207 OF 2019

Mahadev Master Pratisthan Mandal ... Petitioner  
Vs.  
Byaramjee Jeejeebhoy Pvt. Ltd. and others ... Respondents

Mr.R.A.Thorat, Senior Advocate a/w. Ms Pratibha Shelake for Petitioner.

**CORAM : R. G. KETKAR, J.**  
**DATE : JUNE 28, 2019**

**P.C. :**

Not on Board. At the request of Mr. Thorat, learned Senior Counsel for the petitioner, taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioner - Mahadev Master Pratisthan Mandal has challenged the order dated 16.04.2019 below exhibit-244 as also the order dated 21.06.2019 below exhibit-251 passed by the learned trial Judge. By order dated 16.04.2019 below exhibit-244, the learned trial Judge allowed the application filed by the respondents / decree-holders seeking warrant of possession as per Order XXI, Rule 35 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for giving possession of rooms No.3, 5 and 6 of Chawl No.6, C.S.No.151 and 2/151 situate at Dattaram Lad Path, G. D. Ambekar Marg, Chichpokly, Mumbai (for short 'suit premises'). The learned trial Judge also appointed Mr. D. S. Bhagat as a bailiff to execute the warrant. By order dated 21.06.2019 below exhibit-251, the learned trial Judge rejected the application filed by the petitioner for stay of execution of warrant of possession.

3. In support of this Petition, Mr. Thorat submitted that petitioner is claiming independent right, title and interest in respect of the suit

premises. Members of the petitioner are in occupation of the suit premises. They have obstructed the execution of the decree. Once the decree is obstructed, the decree-holder has to take out obstructionist notice. He submitted that by order dated 16.04.2019, the learned trial Judge has issued warrant of possession. By order dated 21.06.2019, the learned trial Judge rejected the application filed by the petitioner for stay of execution of warrant of possession. If these orders are allowed to stand, the objection raised by the obstructionist to the execution of decree will not survive. This will be contrary to the law laid down in ***Brahmdeo Choudhary vs Rishikesh Prasad Jaiswal, (1997) 3 SSC 694.*** He, therefore, submitted that Petition requires consideration.

4. It is not in dispute that earlier petitioner took out application exhibit-126 for joining them as obstructionists No.65(a), 65(b) and 65(c) in Obstructionist Notice No.48 of 2007. By order dated 30.06.2015, the learned trial Judge rejected the application. The learned trial Judge held that petitioners are not necessary or proper parties to be joined as obstructionists No.65(a) to 65(c). Aggrieved by that order, petitioner preferred Revision Application No.303 of 2015 before the Appellate Bench of the Small Causes Court. By order dated 06.10.2018, the Appellate Court dismissed the Revision Application. Aggrieved by that decision, Writ Petition No.2710 of 2019 was instituted in this Court. The Petition was heard at length on 07.03.2019 and was kept for orders on 08.03.2019. On 08.03.2019, on the basis of instructions of Mr. Gopal N. Mohite, President of the petitioner, permission was sought for withdrawing the Petition with liberty to adopt appropriate proceedings. The Petition was accordingly allowed to be withdrawn with liberty as prayed for. It was also made clear that grant of liberty shall not be construed as an expression of merits either way. All contentions of the parties, including maintainability of such proceedings were kept open.

5. It appears that instead of adopting appropriate proceedings in pursuance of the liberty granted by this Court, petitioner took out application for amending reply filed to the Obstructionist Notice No.48 of 2007. The respondents-decree holders filed application exhibit-244 for issuing warrant of possession in respect of the suit premises. By order dated 16.04.2019, the learned trial Judge allowed the application. In paragraph 3, the learned trial Judge, after perusing the documents, observed that rooms No.3, 5 and 6 of chawl No.6 were not occupied till 08.03.2019 by any one and were kept locked. The learned trial Judge accordingly issued warrant of possession. By order dated 21.06.2019, application filed by the obstructionist for stay of execution of possession warrant was also rejected by the learned trial Judge.

6. Mr. Thorat submitted that the objections raised by the petitioner to the execution of the decree will be rendered infructuous and if the impugned orders are allowed to stand, the decree-holder will be in a position to execute the decree. He relied upon the decision in **Brahmdeo Chaudhary** (*supra*) to contend that under Order XXI, Rule 97 of C.P.C., once the objection is raised to the execution of the decree, the Court has to decide the objections.

7. It is not possible to accept this submission. It is not in dispute that the petitioner is impleaded as obstructionist No.65 in the obstructionist notice. The petitioner had filed application exhibit-126 in the Obstructionist Notice taken out by the decree-holder for joining them as Obstructionists No.65(a), 65(b) and 65(c) on the ground that it is in possession of the suit premises. The Bailiff had shown and recorded only one room against the petitioner. The petitioner / Obstructionist No.65 claimed that instead of one room, it is in occupation of 4 rooms and so it be added as Obstructionists No.65(a) to 65(c) in respect of remaining 3 rooms. By order dated 30.06.2015, the learned trial Judge

rejected the application. In paragraph 8, the learned trial Judge referred to the Bailiff's report exhibit-2 showing that the petitioner / obstructionist No.65 obstructed execution of the decree in respect of one room and recorded the said fact. The remaining 3 rooms, namely, suit premises were found locked by the Bailiff when he visited. There was no obstruction from obstructionist No.65 in respect of the suit premises. In the absence of any obstruction in respect of the suit premises, the learned trial Judge held that it is not necessary to bring obstructionists No.65(a) to 65(c) on record.

8. In paragraph 9, the learned trial Judge observed that in the obstructionist notice, the decree-holders contended that three rooms were found locked. The petitioner filed reply dated 02.11.2007 at exhibit-6A. In this reply, petitioner nowhere claimed to be in possession of four rooms as against one room as alleged by the decree-holders. The reply was also not amended so as to include the contention as regards possession of petitioner in respect of the suit premises. After lapse of nearly 7 years, application exhibit-126 was taken out for impleadment.

9. In paragraph 10, the learned trial Judge referred to the rent receipts, electricity bills, voters list produced by the petitioner and observed that all are standing in the name of different persons and not in the name of the petitioner. The petitioner also did not place on record any material that the said persons were its members and actually the said rooms are in their possession.

10. Aggrieved by order dated 30.06.2015, petitioner preferred Revision Application No.303 of 2015 before the Appellate Bench of the Small Causes Court. In paragraph 9, the Appellate Court noted that petitioner is in possession of room No.4. The Bailiff's report noted that the suit premises were locked and the petitioner is found only in

possession of room No.4. The documents relied by the petitioner did not establish that they are in occupation of the suit premises. The Appellate Court accordingly dismissed the Revision Application. Aggrieved by these orders, petitioner instituted Writ Petition No.2710 of 2019 in this Court. The Petition was heard at length on 07.03.2019 and was kept on 08.03.2019 for passing orders. Upon taking instructions from Mr.Gopal N. Mohite, President of petitioner Mandal, Petition was allowed to be withdrawn with liberty to adopt appropriate proceedings. Thus, the petitioner could not successfully demonstrate that the order dated 30.06.2015 below exhibit-126 passed by the trial Court and the order dated 06.10.2018 passed by the Appellate Court in Revision Application No.303 of 2015 suffered from any error. As mentioned earlier, instead of adopting appropriate remedy, they filed application for amendment to the reply filed to the obstructionist notice. In view thereof, no case is made out for interfering with the impugned order. Petition fails and the same is dismissed.

**(R. G. KETKAR, J.)**

*Minal Parab*