

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2083 OF 2019
IN
WRIT PETITION NO.457 OF 1999

Bhojraj Kanji Joshi alias
Bandu Joshi ... Applicant

In the matter between :

Bhagatsingh S/o. Sadhusingh Jina (deceased) through his heirs and legal representatives Ms. Deepa Bhagatsingh Jina And Others	...	Petitioners
Versus		
Bhojraj Kanji Joshi alias Bandu Joshi	...	Respondent

ALONG WITH
CIVIL APPLICATION NO.2084 OF 2019
IN
WRIT PETITION NO.457 OF 1999

Bhagatsingh S/o. Sadhusingh Jina (deceased) through his heirs and legal representatives Ms. Deepa Bhagatsingh Jina And Others	...	Applicants
Versus Bhojraj Kanji Joshi alias Bandu Joshi	...	Respondent

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Mr. Shishir Joshi a/w Mr. Manish Upadhye and Pranjali Joshi for the Applicants in Civil Applications and the Respondent in Writ Petition.

Mr. R.K. Pardeshi for the Respondent in Civil Applications and the Petitioner in the Writ Petition.

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CORAM : S.C. GUPTE, J.

DATE : 04 OCTOBER 2019

P. C. :

. This civil application, namely, Civil Application No.2083 of 2019, has been taken out by the Respondent to the writ petition. The declaratory suit has been decreed against the Petitioner and the order of dismissal has been affirmed by the Appellate court. During the pendency of the Petitioner's challenge to these two concurrent orders in the present writ petition, for a period of one and half years, there was no stay of the impugned orders and accordingly, the original decree of the court, as affirmed by the appellant decree, has been executed, and possession has been assumed by the Respondent as far back as on 4 March 2019. The grievance of the Respondent in the present civil application is that though he has assumed possession of the suit premises, the Petitioner's articles are still lying therein. The description of the articles is to be found in the inventory prepared by the Bailiff in his report dated 4 March 2019. The Respondent, accordingly, seeks an order for removal of these articles. In the alternative, it is prayed that this court should permit the Respondent to auction the articles and deposit the proceeds with this Court.

2 Considering the fact that the decree has already been executed

and possession of the suit premises has been taken over by the original respondent, there is no reason why the Petitioner's goods should be lying in the suit premises. The Petitioners themselves had earlier applied for removal of the goods and by an order dated 26 April 2019 passed by this court, an assurance on the part of the Petitioners' Advocate that the articles would be removed within one week, was recorded by this court. In the premises, appropriate orders need to be passed concerning disposal of the articles.

3 The other civil application, namely, Civil Application No.2084 of 2019, has been taken out by the original respondent for expeditious hearing of the writ petition. The writ petition is of the year 1999 and deserves to be taken up for hearing without any delay.

4 In the premises, both Civil Applications are disposed of in terms of the following order :

: O R D E R :

(i) The hearing of the writ petition is expedited. The petition shall appear on Board for hearing in the first week of reopening of courts after ensuing Diwali Holidays, i.e. on 7 November 2019 ;

(ii) the Petitioners are directed to remove their belongings from the suit premises within four weeks

from today ;

(iii) in case the Petitioners fail to do so within the aforesaid period of four weeks, the Respondent shall be entitled to auction the articles lying in the suit premises in accordance with the inventory prepared by the Bailiff in his report dated 4 March 1999 and deposit proceeds in this Court.

(S.C. GUPTE, J.)