

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12117 OF 2018

Shri Ramdular Ramdhari Prajapati	.. Petitioner
Vs.	
shri Arun Nana More and ors.	.. Respondents

Mr.Sachin Padaye I/b Mr.Girish R.Agrawal, for the Petitioner.
Ms.Siddhi Bhosale, for the Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 30th AUGUST, 2019

P.C. :

. Not on board. Taken on board.

2. By this Petition filed under Article 227 of the Constitution of India, the petitioner challenges the impugned order dated 24/01/2018 passed by the Executing Court in Regular Darkhast No. 8 of 2010 below Exhibit 43.

3. The petitioner is the original decree holder. The trial

Court by judgment and order dated 04/09/2009 decreed the Suit and directed the defendants to deliver vacant possession suit flat to the plaintiff.

4. During the course of execution of the decree, respondent No.1 filed obstructionist application under Order XXI Rule 97 of Code of Civil Procedure for the obstruction to the execution proceedings. The trial Court framed the necessary issue in the said proceedings vide Exhibit 37. Despite grant of opportunity, the obstructionist failed to adduce evidence. Further, obstructionist remained absent, therefore evidence was closed.

5. The obstructionist therefore filed application below Exhibit 42 for setting aside 'No Evidence' order dated 07/06/2017. The decree-holder opposes the application. By the impugned order, the application is allowed with cost of Rs.25,000/-. Learned Counsel for the petitioner submitted that

the obstructionist is not a party to the suit proceedings. According to him, the application itself is not maintainable. He submits that he has raised the objections regarding maintainability of the application. In his submission, Executing Court was not justified in allowing the application, more so when the trial Court has specifically observed that time and again the obstructionist has been instrumental in protracting the execution proceedings. In the submission of the learned Counsel for the petitioner there was no question of granting any opportunity to the obstructionist and the application at Exhibit 43 cannot be said to be bonafide.

6. Learned Counsel for the respondent No.1 supported the impugned order.

7. Heard learned Counsel for the parties. I have gone through the impugned order. The trial Court has specifically observed that obstructionist has not pursued the application

since last 6 years. It is obvious that obstructionist is interested in protracting the execution. Nonetheless, with a view to give an opportunity to the obstructionist, the Executing Court has imposed exemplary costs of Rs.25,000/-. Though I am not inclined to interfere with the order passed by Executing Court, it is necessary in the interest of justice to expedite the execution proceedings.

8. Learned Counsel for the petitioner relies upon decision of the Apex Court in the case of **Usha Sinha Vs. Dina Ram and ors. Reported in 2008(5) Mh.L.J. 483** in support of his submission that obstructionist application at the instance of respondent No.1 is not maintainable. However, this objection has already been taken before Executing Court and Executing Court will obviously deal with the question of maintainability of the proceedings.

9. Learned Counsel for respondent No.1 on

instructions of the obstructionist undertakes not to seek unnecessary adjournments before the Executing Court and co-operate with the Executing Court in the expeditious disposal of the execution proceedings.

10. Considering the fact situation, Executing Court is requested to decide the proceedings expeditiously and preferably within a time of 6 months from today.

11. The Petition is disposed of in the above terms.

(M.S.KARNIK, J.)