

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10988 OF 2018

Appaso @ Mahipati Keshav Shinde ... Petitioner
Vs.
Annaso Keshav Shinde ... Respondent

.....
Mr. Sandesh Patil a/w Mr. Chintan Shah I/b. Mr. Prithviraj S. Gole
for the petitioner.

CORAM : M. S. KARNIK, J.

DATE : 23rd SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. None has appeared on behalf of respondent though he is duly served.
3. The challenge in this petition is to an order passed below Exhibit 28 refusing to cancel the order passed by the Executing Court under Order XXI Rule 32 of the Code of Civil Procedure issuing the attachment warrant in respect of the suit property.

4. The Trial Court in Regular Civil Suit No.169 of 2004 by the judgment and decree dated 30.8.2008 decreed the suit and restrained the defendant from obstructing the plaintiff from user of the suit way.

5. According to the plaintiff, the defendant continued with the obstruction and was watering the suit way purposely, as a result, it was difficult for the bullock carts, tractors and others to ply over the suit way. By an order passed below Exhibit 25 the Trial Court on 25.4.2013 issued attachment warrant as per Order XXI Rule 32 of the Code of Civil Procedure. Learned counsel for the petitioner submitted that the said order is passed without recording any reasons. He would further submit that the defendant is not at all prohibiting the decree holders from using the suit way. As to the observations made by the Trial Court in Para 6 of the impugned order is concerned, learned counsel for petitioner on instructions of judgment debtor would state that he is willing to abide by the order. He therefore states that there was no need for the Trial Court to have continued with the attachment warrant.

6. I have gone through the order passed by the Executing Court and submissions made by the learned counsel for the judgment debtor. Considering the observations made by the Executing Court, I do not find any reason to interfere with the order passed by the Executing Court. The execution proceedings are still pending. As the order is passed as far back as on 6.1.2016, in my opinion, the present petition can be disposed of by passing the following order :-

ORDER

1. The petitioner is permitted to apply to the Executing Court afresh to recall/modify the attachment warrant passed below Exhibit 25 after a period of six months.
2. Considering the conduct of the petitioner during the period since 2016 and during the next six months, the Trial Court to consider the application made for recall of the attachment warrant passed below Exhibit 25 afresh on its own merits and in accordance with law without being influenced by any observations made in the impugned order.

7. With these observations, the petition is disposed of with no order as to costs.

(M. S. KARNIK, J.)