

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

WRIT PETITION NO.10000 OF 2019

Shafiya Ahmed Haju ... Petitioner

Vs.

Anant Mahadev Surve and Ors. ... Respondents

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Mr. Mandar Limaye I/b. Ms. Tanvi Kamat Deosthale for the
Petitioner.

Mr. Sanskar Marathe for the Respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 13th SEPTEMBER, 2019.

P. C.:

1. Heard.

2. The petitioner is the original judgment debtor No.4 challenges the order passed by the Executing Court issuing possession warrant.

3. The suit filed by respondent No.1 was initially dismissed by the Trial Court. The First Appellate Court allowed the appeal and directed the defendant No.4 to handover the possession to the plaintiff. The Second Appeal filed by the defendant No.4 in this Court came to be dismissed. The Special Leave Petition filed by the defendant No.4 also came to be

dismissed. The Review Petition filed by the defendant No.4 seeking review of the judgment and order passed by this Court in Second Appeal was dismissed.

4. Thereafter, during the course of the execution of the judgment and decree the petitioner-judgment debtor No.4 filed application below Exhibit 55 contending issue of tenancy and possession is not decided properly and there is material irregularity in deciding these issues. This application is filed under Section 47 of the Code of Civil Procedure. According to learned counsel for the petitioner without deciding the application, the Executing Court has proceeded to issue possession warrant by the impugned order dated 7.8.2019. The petitioner filed Regular Civil Appeal No.70 of 2019 before the District Judge. The Appellate Court rejected the application for stay on 31.8.2019. The order is passed below Exhibit 7.

5. I have gone through the impugned order. The Appellate Court has observed that after complete adjudication of the identical issues where a similar defence is taken, the issue

of possession as well as tenancy is already decided. The same issues are raised again in obstruction proceedings. I do not see any reason to interfere with the order passed by the Appellate Court. It is obvious that the proceeding are taken to protract the execution of the decree.

6. The petition is therefore devoid of any merits and is rejected.

7. Needless to mention, the appeal may proceed on its own merits and in accordance with law.

(M. S. KARNIK, J.)