

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

WRIT PETITION (ST.) NO. 30398 OF 2019

Smt. Taravati Harishankar Chaurasiya	...	Petitioner
V/s.		
Ashok Balwant Mantri & Ors.	...	Respondents

Mr.Ajay Singh for Petitioner.
Mr.Pradeep Ramchandani for Respondents.

CORAM : A.S. GADKARI, J.

DATE : 25th February 2020.

PC. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner/obstructionist in R.A.E. & R. Suit No. 1260/4001 of 1987 has impugned (i) Judgment and Order dated 13th September 2012 passed in Obstructionist Notice No. 983 of 2009 in R.A.E. & R. Suit No. 1260/4001 of 1987 by the learned Judge of Small Causes Court, Mumbai, making the said Obstructionist notice filed by the original plaintiff/respondent herein absolute and (ii) Judgment and Order dated 7th November 2019 passed by the Appellate Bench of the Small Causes Court, Mumbai in Ex. Appeal No. 12 of 2013 in Obstructionist Notice No. 983 of 2009 in R.A.E. & R. Suit No. 1260/4001 of

1987, dismissing the said Appeal with costs.

2] Heard Mr.Ajay Singh, learned counsel for the petitioner and Mr.Pradeep Ramchandani, learned counsel for the respondents/original plaintiffs. Perused the entire record annexed to the Petition.

3] The record indicates that, the respondents/original plaintiffs had instituted the aforestated R.A.E. & R. Suit No. 1260/4001 of 1987 in the Small Causes Court, Mumbai, for eviction of Mr.Sunil Sevardekar and Mr.Shrinath Ramkrishna Chourasia through his legal heirs. The said suit was decreed by the Trial Court by its Judgment and Order dated 5th March 1999. At the time of execution of the said decree, when the bailiff had been to the suit premises, the petitioner obstructed it on the ground that, the decree dated 5th March 1999 is with respect to Shop No. 21 situated at 'Pachkalsheewadi, Opp. Kaiser Hind Mills, Cottongreen, Mumbai - 400 033' and according to the petitioner she is residing at 'Mohalla 103/A, Near Patara Shed, G-1, Rambhau Bhogale Marg, Opp. New Hind Keshar Mill, Near Hanuman Vijay Mandal, Mumbai - 400 033'. That the said two premises are different and distinct premises and therefore, the said decree cannot be executed at some different place. The respondents/original plaintiffs therefore filed Obstructionist Notice No.983 of 2009. As noted earlier, the Trial Court has allowed the said Obstructionist Notice in favour of the respondents/original plaintiffs and has directed the petitioner herein to deliver quite and vacant possession of the suit premises

marked by green coloured boundary lines on the sketch annexed to the said decree. As noted earlier, the Appellate Court has turned down the appeal preferred by the petitioner.

4] Learned counsel appearing for the petitioner strenuously tried to canvass a point that, the suit premises wherein the petitioner is presently residing is totally different from one which is mentioned in the decree passed by the Trial Court dated 5th March 1999. During the course of arguments, he submitted that, the petitioner is residing on the rear side of the said shop No.21 which is also known as 'Mohalla 103/A, Near Patara Shed, G-1, Rambhau Bhogale Marg, Opp. New Hind Keshar Mill, Near Hanuman Vijay Mandal, Mumbai - 400 033'. He submitted that, the petitioner has no other premises to reside. He submitted that, the respondents/original plaintiffs intends to execute the decree after a gap of about 10 years, which is not permissible under the law and therefore, the impugned Judgments and Orders may be set-aside by allowing the present Petition.

5] As noted earlier, the learned counsel for the petitioner has fairly admitted the fact that, the suit premises i.e. Shop No.21 situated at 'Pachkalshewadi, Opp. Kaiser Hind Mills, Cottongreen, Mumbai - 400 033' is the same premises which the petitioner is contending as she is residing there having address 'Mohalla 103/A, Near Patara Shed, G-1, Rambhau Bhogale Marg, Opp. New Hind Keshar Mill, Near Hanuman Vijay Mandal, Mumbai -

400033'. Therefore the decree dated 5th March 1999 is being executed at the premises mentioned in it only and not at any other place. Under the law a decree can be executed within a period of 12 years and therefore, there is no substance in the contention of the learned counsel for the petitioner that, the respondents/original plaintiffs are belatedly executing the decree passed in his favour. The record indicates that, at the time of passing of the said decree, the petitioner was not in possession of the suit property. That by taking undue advantage of the fact that, the respondents/plaintiffs are belatedly executing the decree, it appears that, the petitioner has entered into premises surreptitiously with a view to defeat the decree passed in favour of the respondents/original plaintiffs. The record clearly reveals that, the decree is being executed at the address mentioned therein and there is no substance in the contention of the petitioner. The defence put up by the petitioner/obstructionist in execution proceedings is not only sham but moon shine too.

6] Apart from the facts mentioned hereinabove, there is concurrent finding recorded by both the authorities below. The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil, reported in (2010) 8 SCC 329* has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article

227 of the Constitution, interfere with the Orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S. Shetty (Supra)* has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015)*

5 SCC 423.

7] In view of the above and after perusing the entire record, this Court is of the considered view that, there are no merits in the present Petition.

8] Petition is accordingly dismissed summarily.

9] As per the pleadings in the Petition and record, as of today, the petitioner only is in possession of the suit property and nobody else is claiming any other right in the suit property. Learned counsel for the petitioner concedes to the said fact before this Court. At the time of execution of the decree, if anybody other than the petitioner is found to be in possession, the Executing Court will be at liberty to remove the concern person(s) from suit property with the assistance of police.

The respondents/original plaintiffs are at liberty to execute the decree. The Executing Court may consider the application filed by the respondents/original plaintiffs for providing police protection at the time of execution of the decree and taking possession of the suit property.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn
Digitally signed
by Omkar S.
Kumbhakarn
Date:
2020.03.02
17:32:15 +0530