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

WRIT PETITION NO.196 OF 2020

RR Kalyankar Hotels & Resorts Pvt. Ltd.	... Petitioner
Versus	
Maharaja Dining Hall and Ors.	...Respondents

Mr. A. K. Karandikar, for the Petitioner.

Mr. Onkar Gupte, for the Respondents.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Gupte waives service on behalf of the Respondents.
3. By this petition, the petitioner has sought the following substantive prayer:-

“33.(a) that this Hon’ble Court be pleased to call for the records and proceedings in Execution Application No.92 of 2018 in

Special Civil Suit No.291 of 2017 pending before the Civil Judge, Senior Division, Panvel, and on perusal of its legality, propriety and correctness of the same, be pleased to allow the Application of the Petitioner dated 19th November 2019 for reconstruction of the records in Execution Application No.92 of 2018 and further direct the Hon'ble Trial Court to proceed with Execution Application No.92 of 2018.”

4. Learned Counsel for the Petitioner submits that the learned Civil Judge, Senior Division, Panvel, is refusing to hear the application of the petitioner for reconstruction of the records in Execution Application No.92 of 2018, only on the premise that the complaint filed by the petitioner before the District Judge is pending. He submits that the complaint filed by the petitioner before the learned District Judge has nothing to do with the application filed by the petitioner for reconstruction of the records.

5. Perused the papers. It appears that as the records in the Execution Application were missing, the petitioner filed a complaint before the learned District Judge and had prayed as under:

“6. a This Hon'ble Court be pleased to appoint fit and proper person and conduct an inquiry into the above matter.

- b. This Hon'ble Court be pleased to pass appropriate order or to take appropriate action against Mr. Durge, Mr. Kadam, and the Advocate for the Respondents or such court staff as it may deem fit appropriate to this Hon'ble Court and further impose appropriate punishment against them for such misconduct, deliberate act of withholding papers.
- c. Any other just and further relief be granted as this Hon'ble Court may deem fit and proper."

6. As far as application dated 19th November, 2019, is concerned, which is filed by the petitioner, the petitioner prays for reconstruction of the records in Execution Application No.92 of 2018. Merely because the complaint before the learned District Judge for fixing responsibility or conducting of an enquiry with regard to missing papers is pending, cannot be a ground for not proceeding with the Execution Application, which is pending before the learned Civil Judge, Senior Division, Panvel.

7. The Petitioner is permitted to reconstruct the records in Execution Application No.92 of 2018, subject to the satisfaction of the learned Civil Judge, Senior Division, Panvel. The Respondents are also permitted to assist the Court in the reconstruction of the records. After the records are reconstructed in Execution Application No.92 of 2018, the

learned Civil Judge, Senior Division, Panvel, to proceed with the same, in accordance with law.

8. The Petition is allowed. Rule is made absolute in the aforesaid terms.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.