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

**WRIT PETITION NO.1942 OF 2020**

Ramakrishnan Aruna Chalam ... Petitioner  
V/s.  
Vrinda G. Pai & Ors. ... Respondents

Mr. Pradeep Thorat with Aniesh Jadhav for the Petitioner.  
Mr. Rajesh Datar for Respondent No.1.

**CORAM : S. M. MODAK, J.**

**DATED : 23RD SEPTEMBER 2022.**

**PC:-**

1. Heard learned Advocate Mr.Thorat for the Petitioner/Obstructionist No.3 and learned Advocate Mr. Rajesh Datar for Respondent No.1/decreed holder.
2. Respondent Nos.2 to 9 are judgments debtors whereas Respondent Nos.10 and 11 are other two obstructionists. There is order passed by Executing Court on 4th December 2018 below Exhibit-79. It was passed in the proceedings of Execution Application No.69 of 2011. The present obstructionist was not party to original eviction proceedings. It is matter of record that the eviction decree has been confirmed upto the Hon'ble Supreme Court.
3. The decree holder claims that when possession warrant was issued the Petitioner-Obstructionist has not come on record by contending that he is in possession of the premises (whether it is room or shop) but after notice of the obstruction proceedings was issued the Petitioner claims that he is in possession of certain premises. So even

though there is order of possession warrant in favour of decree holder, he has filed obstructionist notice No.10 of 2013 which is on page 32. There are three obstructionists, out them present Petitioner is Obstructionist No.3.

4. It seems that there is certain confusion about identity of the premises and also whether it is shop or room. A map is produced by present Appellant in obstruction notice at page 131. The Appellant claims that he is in possession of the premises described at Serial No.3 and it is apart from premises described at Serial Nos.1 and 2. Whereas decree holder contends that present obstructionist was not at all in picture earlier and in fact the premises described at Serial No.3 is situated behind premises described at Serial No.1 in the said plan.

5. My attention is invited to observations in certain paragraphs of the impugned judgment. On reading paragraph 19 to 22, it is clear that there are different bailiff's report describing the premises in different way. Be that it may, the First Appellate Court in Miscellaneous Appeal No.9 of 2019 has confirmed the order of issuance of warrant passed by the Executing Court. The said Appeal was preferred by the present Petitioner against the order of issuance of possession warrant by the executing warrant.

6. It is submitted that yet obstruction notice is pending and it is pending since 2013 and in fact the decree holder is desirous of getting decision in that obstructionist notice. Hence there is joint request by both learned Advocates that the impugned order be set aside and let direction be issued to the trial Court to dispose of obstruction notice expeditiously.

7. Certainly, this suggestion is welcome because even though the Court will go into correctness of the impugned order still obstruction

notice is pending for adjudication and as such there will not be fruitful adjudication unless and until obstruction notice is finally decided. So this Court feels that let the impugned order be set aside with the direction to decide the notice expeditiously. There is also consensus that the order of issuance of warrant also needs to be set aside. While setting aside the said order, it is made clear that this Court has not expressed any opinion upon the rights of rival parties and all contentions are kept open.

8. There is request on behalf of the decree holder that directions be issued to the trial Court to decide particular plea in view of stand taken by the Appellant/Obstructionist No.3. To this submission this Court feels that if any particular plea is raised by either of parties in the proceedings, the trial Court is bound to decide the issue. This Court feels that no such directions are required.

9. It is submitted that the parties are desirous of adducing evidence. It is true that there are two more obstructionist. They have not appeared in these proceedings as notice is not issued to them. Even though hearing of the obstruction notice is expedited, this Court feels that there is no encroachment on their right to contest obstruction notice. So this Court is inclined to set aside the order and issue necessary directions. At the same time certain directions are also required to parties to see that evidence is adduced punctually because otherwise it happens that time bound directions only binds the Court and there is no check on conduct of the parties.

10. In view of above the following order is passed :

O R D E R

- (i) The order dated 7th February 2020 passed in Miscellaneous Appeal No.9 of 2019 and order dated 4th December 2018 passed below Exhibit-79 in Execution Application No.69 of 2011 are set aside.
- (ii) The trial Court seized of the Obstruction Notice is directed to decide it as expeditiously as possible and within a period of one year from today.
- (iii) The present Appellant and the decree holder are directed to furnish list of witnesses to the trial Court within a period of three weeks from today.
- (iv) The trial Court is also directed to obtain list of witnesses from other obstructionists.
- (v) As judgment debtor are formal parties, probably they may not adduce any evidence but if required they are at liberty.
- (vi) After the turn of parties of giving evidence arise they are directed to complete giving evidence within two months.
- (vii) This direction is applicable to all parties.
- (viii) The trial Court is directed to regulate conduct of the parties who are indulging in dilatory tactics by using its powers and also by using powers of imposing exemplary costs.
- (ix) It is made clear that the parties who are taking unnecessary adjournment shall be imposed cost of atleast Rs.10,000/-.

(S. M. MODAK, J.)