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

WRIT PETITION NO.6662 OF 2021

Kantilal Dasu Vyawahare and ors. .. Petitioners
vs.
Anil Sadashiv Jagtap .. Respondent

Ms. Gauri Surel Shah for petitioners.
Mr. Ajay Joshi a/w Pranali Railkar for respondent.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 3, 2022

P.C.:-

1. Heard learned counsel for the parties.
2. The order impugned is dated 13.03.2020 passed by the Executing Court in Regular Darkhast No.87 of 2012 below Exhibit '37'.
3. The petitioners-original plaintiffs filed a suit for perpetual injunction restraining the respondent-defendant from interfering with the petitioners possession and encroaching upon the suit land. The said suit came to be decreed. By the judgment and order dated 12.10.2011, the trial Court restrained the respondent-defendant from causing obstruction to the possession of plaintiffs over the suit land.

4. The decree was put up for execution by the plaintiffs. The execution proceedings are pending. At the stage when the respondent was under cross examination, the plaintiffs filed an application below Exhibit '37' dated 23.01.2020 contending that the plaintiffs want to put up a grape plantation in the suit property and accordingly fence the suit land. In the application, the petitioners stated that the same could not be done as the respondent obstructed the petitioners from doing so. Therefore, the application is made for police protection to enable the petitioners to put up a fence and carry on the plantation of grapes. The application was opposed by the respondent-judgment debtor.

5. The trial Court rejected the application. The relevant reasoning being paragraph 3 which reads thus :-

"3. Considering the rival contention of both the sides. So also I have gone through the record of case in hand and document produced from both the sides. It is also admitted fact on record that, second appeal is prefer before the Hon'ble Bombay High Court. The present execution proceeding is pending for cross examination of decree holders witness. The original decree is in respect of perpetual injunction passed against judgment debtor. It is not case of the decree holders that, they are required possession of the suit property from the judgment debtor. I have carefully perused the contents of application from it appears that, it is no where contended by the decree holders on which date they have intend to plant the grapes in the suit property. So also they have not filed any map of measurement of the suit property to fence the suit property. As per the law, if defendants disobey the order of court or to cause breach of injunction that time decree holders having remedy to filed contempt petition before the court and prayer for detention of judgment debtor or to attach his property. In the present case in hand it is no where contended by the decree holders on which date the judgment

debtor's has caused obstruction to the possession of the decree holders over the suit property therefore, there is no any circumstances arises before this court to grant police aid to the decree holders. As per the law, police aid can be granted in very exceptional circumstances and in the present case after considering the contents of application it is no where appears that, such exceptional circumstances arises to the decree holders for police aid. Hence, I proceed to pass following order.

ORDER

1. Application is rejected."

6. Learned counsel for the petitioners submitted that though the suit is decreed in their favour, the judgment debtor, since 2012, by raising frivolous objections is preventing the plaintiffs from enjoying the fruits of the decree. Learned counsel submitted that even on earlier occasions the police protection was granted as the judgment debtor had caused obstruction.

7. Learned counsel for the respondent-judgment debtor on the other hand supported the impugned order. Learned counsel submitted that the application itself is not maintainable. He submits that the judgment debtor is under cross examination and therefore, it is the execution proceedings which should be taken to its logical conclusion instead of entertaining such application as Exhibit '37' below which the impugned order is passed.

8. I have gone through the petition, the exhibits and the impugned order. A reading of the impugned order indicates

that the application has been rejected by the Executing Court on the ground that the same is bereft of any details and material particulars regarding the obstruction which is alleged by the petitioners on the part of the respondent.

9. I have perused the application dated 23.01.2020 below Exhibit '37'. In paragraph 3, except for stating that the petitioners-decree holder want to put fencing to protect the property and plant grape garden which is being obstructed by the respondent-judgment debtor, the application is bereft of any material particulars. I, therefore, do not see any reason to interfere with the impugned order passed by the Executing Court, however, it is made clear that in the event an appropriate application is filed by the petitioners-decree holders before the Executing Court with all material particulars regarding the obstruction alleged and for police protection for the purpose of putting up a fence around the grape garden, the same shall be considered on its own merits without being influenced by the rejection of the application Exhibit '37'. It is made clear that in the event such an application is filed, the same shall be considered on its own merits and in accordance with law without being influenced by any observations made in the impugned order passed below Exhibit '37' or the observations made by me in this order. All contentions are kept open including the contention of the respondent-judgment debtor regarding the maintainability.

10. In the interest of justice and considering that the decree is of the year 2012, if an appropriate application is made by the petitioners-decree holders within a period of two weeks from today, the same be considered expeditiously by the Executing Court.

11. Subject to what is observed above, the Writ Petition stands rejected.

(M.S. KARNIK, J.)