

Dusane

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

WRIT PETITION NO.12781 OF 2019

Delfina R.Fernandes & Ors. ...Petitioners

V/s.

Ms. Tabassum Govil & Anr. ...Respondents

Mrs. Zenobia Shapoor Irani a/w Mr. Prashant Tikare
for Petitioners.

CORAM: MADHAV J. JAMDAR, J.

DATE: 29th SEPTEMBER 2022

P.C.:

1. Heard Mrs. Irani, learned counsel appearing for the
Petitioners.

2. The Petitioners have challenged an order dated 6th
March 2019 passed in Execution Application (Stamp) No. 816
of 2018 by the learned Judge, Small Causes Court, at Bandra,
Mumbai. By the impugned order, the learned Executing Court
has kept execution proceedings in abeyance as decree has
been stayed.

3. The Petitioner, who is landlord has filed suit bearing RAE Suit No.44/102 of 1987 on the ground of bonafide requirement, non-user and acquisition of alternate suitable premises. The trial Court decreed the suit by the judgment and decree dated 17th July 2015 on the ground of bonafide requirements and acquisition of alternate suitable accommodation however, negated the ground regarding non-user.

4. Respondent-tenant filed an appeal bearing Appeal No. 31 of 2015 challenging the said eviction decree before Appellate Court and the Petitioner-landlord also filed Cross-Objection in said appeal. The appellate Court by the judgment and decree dated 9th February 2017 dismissed the appeal and allowed the Cross-Objection. The effect is that the suit filed by the landlord i.e. the Petitioner bearing RAE Suit No. 44/102 of 1987 is decreed on all the grounds including non-user of the suit premises.

5. The said decree passed by the trial Court as well as appellate Court is challenged by the Respondent no. 1 in this Court by filing Civil Revision Application No. 382 of 2017.

Learned Single Judge passed following order on 20th February 2018 in the said revision.

"1. Heard the learned counsel for the parties. It appears that the issues with regard to the bonafide requirement of the Respondent-landlord and of non-user of the suit premises would require a consideration at the final hearing.

2. Hence, Rule.

3. Till the final disposal of the revision, the execution proceeding, if any, filed by the Respondents shall remain stayed. Hearing expedited.

4. List this petition on the "Final Hearing" board in the week commencing from 26th March 2018."

(Emphasis added)

6. It is very significant to note that although this Court stayed the execution by order dated 20th February 2018, Execution Application (St.) No. 816 of 2018 is filed by the Petitioner on 14th September 2018. In the said Execution Application, the Executing Court passed following order:

"None present when called. Record shows that decree is stayed. No further progress is on record. Hence, application is kept in abeyance till the vacation of stay."

This order is impugned in the present Writ Petition.

7. It is the contention of Mrs. Irani that the Cross-Objection is a separate proceeding and therefore although there is stay to the decree on the ground of bonafide requirement and acquisition of alternate premises, the decree passed on the

ground of non-user has not been stayed. She submitted that as Appeal filed by the tenant and Cross-Objection by the landlord are two separate proceedings, two separate Civil Revision Applications are required to be filed. She submitted that as only one Civil Revision Application is filed, the decree passed by the trial Court is stayed and decree passed by the Appellate Court in Cross-Objection on the ground of non-user is not stayed.

8. It is true that the Respondent-original tenant has filed only one Civil Revision Application bearing No. 382 of 2017. However, in the said Revision Application *inter alia* judgment and decree dated 9th February 2017 passed by the Appellate Court of Small Causes Court, Bandra, Mumbai is challenged, by which the appeal was dismissed and Cross-Objection was allowed.

9. Learned Single Judge of this Court specifically recorded in the order that the issues with regard to the bonafide requirement of the Respondent-landlord and of non-user of the suit premises would require a consideration at the final hearing and further directed that till the final disposal of the

revision, the execution proceeding shall remain stayed. Thus there is no infirmity in the impugned order passed by the Executing Court.

10. It is significant to note that the learned Single Judge has specifically made reference to both the issues namely bonafide requirement and non-user of the suit premises. The ground of non-user is subject matter of Cross-Objections filed by the Petitioner before the Appellate Court. The contentions raised on behalf of the Petitioners that there are two separate decrees, one on the ground of bonafide requirement and another on the ground of non-user and decree on the ground of non-user is not challenged in the aforesaid Civil Revision Application filed before this Court and therefore decree on the ground of non-user is not stayed are without any basis. After the Cross-Objections are allowed, the effect is that the Trial Court's decree merges with the appellate Court decree and therefore the effect of the same is that the suit is decreed on all the grounds including non-user. Therefore, the contention raised by the learned counsel appearing for the Petitioners that there are two separate decrees and only one decree is stayed is without any basis.

11. It is further significant to note that this Court stayed the execution by order dated 20th February 2018 and thereafter execution proceedings without disclosing the order passed by this Court are filed on 14th September 2018. In any case proceeding with the execution proceeding and insisting that decree on the ground of non-user be executed is abuse of the process of law. The same is totally contrary to the order dated 20th February 2018 passed by this Court. The present Petitioners are arrayed as Respondents in said Civil Revision Application No. 382 of 2017 and appeared through Advocate. Thus, the Petitioners are aware about the order dated 20th February 2018 granting stay to the execution. Thus filing of execution proceeding and even this Writ Petition challenging the order of Executing Court keeping in abeyance execution proceedings as the decree is stayed is also abuse of the process of law. Therefore this petition is dismissed with cost of Rs.25,000/-. The said cost be paid to Kirtikar Law Library within three weeks from today.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
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