

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

MISC. CIVIL APPLICATION NO. 492 OF 2022

Niyaz Ahmed Qureshi S/o.

Fazail Llahi Qureshi And

Another

....Applicant

Versus

Fazail Llahi Qureshi and another

....Respondents

Mr. Jayesh Bhatt Advocate for the Applicant

S. Shamim & Co. Advocate for respondent Nos. 3 to 12

CORAM : S. G. DIGE, J.

DATE : 9th DECEMBER, 2022.

P.C. :

1. Heard learned counsel for the applicant and learned counsel for the respondent Nos. 3 to 12. Learned counsel for the applicant submits that, respondent Nos. 3 to 12 have fraudulently obtained the consent decree in respect of premises of applicant, which is Waqf property, behind the back of applicant. Application of Applicant to be joined him as a party, was opposed by respondent

No. 3 to 12. The suit is decreed in favour of respondent No. 3 to 12. Pursuant to said decree they have filed obstructionist notice against the applicant which is pending before the Small Causes Court, Mumbai. Respondents have filed suit before Waqf Board for declaration that they are owners of the suit property and it is not Waqf property.

2. The applicant has also filed suit before Waqf Tribunal for protection of his possession of his premises. Both the suits are pending before Waqf Tribunal. It is therefore, prayed that obstructionist notice pending before the Small Causes Court, Mumbai may be transferred to Waqf Tribunal or in the alternative further proceeding in the said obstructionist notice may be stayed pending herein and disposal of the proceeding before the Waqf Tribunal.

3. Learned counsel for the respondent No. 3 to 12 submits that, respondent's suit for eviction is decreed by the Small Causes Court, Mumbai. As per said decree, the respondents have filed execution proceeding before the Small Causes Court. When suit was pending, applicant had filed application for intervention before the Small Causes Court. It was rejected by the Small Causes Court. Thereafter, applicant challenged said order before the

Division Bench of Small Causes Court. It was also rejected. Applicant is not party to the execution proceedings. So he has no right to seek relief of transfer the execution proceeding from Small Causes Court to Waqf Board. The application is not maintainable.

4. I have heard both learned counsels. Applicant is claiming in possession of the property in which the Small Causes Court has granted decree in favour of respondent Nos. 3 to 12. Applicant is seeking transfer of execution proceeding from Small Causes Court to the Waqf Board, as respondents have filed suit before the Waqf Board. For transfer of the proceeding it is necessary that, it should be made by the either of the party who were part of the proceedings before Small Causes Court. Admittedly, the intervention application of the applicant to join him as a party, in the suit pending before the Small Causes Court, was rejected by the Small Causes Court. The revision against the said order is also dismissed by the Division Bench. So the applicant was not party in the suit of eviction pending before the Small Causes Court. Hence, relief claimed by the applicant cannot be granted. Application is rejected and disposed of.

5. All the contentions of the parties are kept open.

(S. G. DIGE, J.)