

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.142 OF 2021
WITH
CIVIL APPLICATION NO.15 OF 2021
IN
WRIT PETITION NO.142 OF 2021**

PANDHARINATH D. CHODANKAR ... APPLICANT
Versus
WAUSVEL J. S. MIRANDA
AND ANR ...RESPONDENTS

Mr. Aldrin Monteiro, Advocate for the Applicant.
Mr. S.S Kakodkar, Advocate with Mr. P.M. Nayak Advocate
for the Respondents No.1 and 2.

CORAM: BHARAT P. DESHPANDE, J.

DATE: 19th OCTOBER 2023

P.C.

1. Heard learned Counsel Mr. Monteiro appearing for the Petitioner and learned Advocate Mr. Kakodkar appearing for Respondent nos. 1 and 2.

2. By way of this petition, the Petitioner is challenging the Impugned Order dated 07.10.2019 passed in Regular Execution Application No. 2/2015 whereby the Executing Court directed the Petitioner/Judgment-Debtor to hand over vacant possession of the portion of the suit hut in favour of the Decree-Holder together with mesne profit.

3. It is the contention of Mr. Monteiro that the First Appellate Court in an appeal has already rejected his claims of mesne profit. However the Executing Court granted such relief without considering the fact that the Appellate Court has refused the relief of mesne profit to the Decree-Holder.

4. Second contention of Mr. Monteiro is that Second Appeal is filed challenging the Appellate Court's Decree which is admitted. If the possession is handed over the appeal would become infructuous.

5. Third ground raised by Mr. Monteiro is that the Executing Court is unable to consider the exact portion of the hut which needs to be handed over to the Decree-Holder as per the Decree.

6. Mr. Kakodkar appearing for respondent pointed out that the Decree-Holder has already made statement before Executing Court that he is not pressing for mesne profit as such relief is denied by the Appellate Court. He then submitted that subsequent Order passed by the Executing Court on 22.02.2022 records the statement of the Decree-Holder in para no. (9) and therefore such objection raised by the Petitioner is of no substance.

7. The Order dated 22.02.2022 passed by the Executing Court clearly recorded in para no. (9) that since the relief of mesne profit is already denied by the First Appellate Court, the Decree-Holder is only pressing for relief of handing over possession of the suit hut.

8. Mr. Kakodkar then submits that by handing over

possession of the portion of suit house would not in any way render the Second Appeal infructuous.

9. He submits that there are findings of the Trial Court that the Judgment-Debtor is a rank trespasser. He then submitted that if the Second Appeal is allowed, the Judgment-Debtor/Petitioner would be free to claim possession.

10. After considering the rival contentions it is observed that the Impugned Order i.e. Order 07.10.2019 which is challenged before this Court in the year 2021. There is no explanation for the delay in approaching this Court.

11. The Decree speaks about handing over of vacant possession of portion of the hut which is in possession of the Judgment-Debtor. Admittedly, there is no stay granted in this Court in Second Appeal no. 12/2015. Infact Civil Application no. 118/2017 was withdrawn by the Petitioner, which was filed for grant of stay. Further the Order passed by the Civil Court for handing over possession of the portion of the suit hut cannot be faulted with.

12. The submissions advanced on behalf of the Petitioner are devoid of merit. The Petition deserves to be dismissed along with Civil Application No. 15/2021. Accordingly, the Petition as well as Civil Application stands dismissed.

BHARAT P. DESHPANDE, J.