

Dusane

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

WRIT PETITION NO.1106 OF 2023

Vincent Alfred Kunder ...Petitioners
(since deceased) thru LRs
Doreen Lawrence & Ors.

V/s.

Ellington Peter Anthony Carvalho ...Respondent
(since deceased) thru LRs
Gwendolyn Mary Demetrios Stephen
& Ors.

BHALCHANDRA
GOPAL
DUSANE

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Mr. Sumedh S. Modak for Petitioners.

CORAM: MADHAV J. JAMDAR, J.
DATE: 27th JANUARY, 2023

P.C.:

1. Heard Mr. Modak, learned Counsel appearing for the Petitioners.

2. The Petitioner is the judgment debtor. By the present petition filed under Article 227 of Constitution of India, the Petitioner is challenging the legality and validity of the order dated 8th July 2022 passed below Exhibit 8 in Execution Application (Stamp) No. 602 of 2019 in R.A.E. Suit No. 265/544 of 2007.

3. By the impugned order, the premises No.95 were allowed to be corrected as premises No. 96. It is an admitted position that the judgment-debtor was occupying premises No. 96. The same is also clear from the title of the present Writ Petition. Even in the title of the plaint, address of the Defendant i.e. Judgment-debtor is mentioned as premises No. 96.

4. By typographical mistake, the premises No.96 are mentioned as premises No. 95 in the decree. It is the only contention of Mr. Modak, learned Counsel appearing for the Petitioners that the earlier application seeking same relief was rejected. In fact the earlier application was rejected with a direction to file separate Miscellaneous Civil Application or Marji Application before the Court, who has passed the decree in RAE Suit No. 265/544 of 2007 on 1st April 2019. It appears that according to that direction, the Respondent i.e. decree-holder filed Marji Application No.4 of 2022 in RAE Suit No. 265/544/2007. However, in the meanwhile by the impugned order, the learned Judge, Small Causes Court, Mumbai passed order below Exhibit 8 in Execution Application (Stamp) No.602 of 2019 and allowed the decree holder to carry out the said correction by correcting premises No. 95 as premises No. 96.

5. The said order has been passed on 8th July 2022. Thereafter as the said order has been passed on 8th July 2022, the decree-holder withdrew the application filed bearing Marji Application No. 4 of 2022 as the order is already passed dated 8th July 2022.

6. The present Writ Petition is filed on 4th January 2023 after the decree holder withdrew his application bearing Marji Application No. 4 of 2022 on 19th November 2022.

7. It is admitted position that the Petitioner is judgment debtor. It is clear that the judgment debtor is taking advantage of typographical mistake, which has occurred in the decree. In any case, by the impugned order what has been done is to allow the change of premises as premises No. 96 instead of premises No. 95. It is admitted position that the decree holder is staying in the premises bearing No. 96. In fact the title of the suit as well as of this petition shows that the judgment debtor is staying in premises bearing No. 96. However, in the decree by typographical mistake, it has been mentioned as 95. Therefore, this is not a case where interference of this Court under Article 227 of the Constitution

of India is warranted. Therefore, the Writ Petition is dismissed.

(MADHAV J. JAMDAR, J.)