

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 144 OF 2023
WITH
INTERIM APPLICATION NO. 1843 OF 2023**

Kishan Bhima Jadhav

..Appellant

Vs.

Adil Dadibai Driver & Ors.

...Respondents

Mr. Vivek Shukla with Ms. Trupti Gaikar and Ms. Priyanka Menon i/b.
Ms. Pragya Mishra for Appellant.

Mr. Javed Akhtar for Respondent Nos.1 & 2.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 24, 2023

P.C.:

1. Not on board. Taken on board on a praecipe being moved on behalf of the Appellant.
2. Heard learned counsel for the appellant and learned counsel for respondent nos.1 and 2.
3. This appeal is filed assailing an order dated 18 February, 2023 passed by the City Civil Court, Mumbai whereby ad-interim relief on notice of motion as filed by the appellant has been rejected.

4. The appellant had moved the City Civil Court in the suit in question inter alia praying for a relief to grant a perpetual prohibitory injunction against the defendants from dispossessing the appellant from the suit premises situated at 6-D, Sethna Hall, Opp. GST Bhuvan, Mazgaon, Mumbai – 400 010, and to restrain the defendants from causing any disturbance, breach of peace or nuisance to the peaceful existence and business work of the appellant. This was the only relief as prayed for by the appellant. The appellant moved a notice of motion praying for a temporary injunction against the respondents, that the appellant be not dispossessed. It appears that inter se between the respondents, there was a dispute which was subject matter of the proceedings of L. E. & C. Suit No. 120/148 of 2012 as filed by M/s. Ahura Engineering & Company against respondent no.3 and others before the Small Causes Court at Mumbai. The said suit came to be decreed by the Small Causes Court. The decree was sought to be executed by filing Execution Application No. 312 of 2016. The appellant claiming to be a sub-tenant of the judgment debtor before the Small Causes Court, i.e. sub-tenant of respondent no.3 in the present proceedings initiated to obstruct the decree. The appellant accordingly, moved an application below Exhibit 41 in the execution proceedings filed by the decree holders before the Small Causes Court (Execution Application No. 312 of 2016). However, he failed to obtain

any ad-interim orders as clear from the order dated 21 February, 2023 as passed by the Court executing the decree passed by the Small Causes Court. As the appellant could not succeed in obtaining any orders in the execution proceedings in his capacity as an obstructionist to the said decree, he pursued the notice of motion in question and prayed for ad-interim relief as noted above.

5. In my prima facie opinion, not only the notice of motion but also the suit appears to be thoroughly misconceived. If at all any rights are to be asserted by the appellant, they are necessarily in the capacity as an obstructionist to the decree which is subject matter of adjudication before the executing Court, for which he has already moved an application which is subjudice and pending adjudication.

6. In the above premises, I do not find that any case is made out by the appellant to interfere in the order passed by the City Civil Court. It is accordingly rejected. No costs.

[G.S. KULKARNI, J.]