



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

WRIT PETITION NO.3336 OF 2023

Khaliluddin Ashrafuddin Khatib

...Petitioner

Versus

Ishaque Ismail Shaikh and Ors.

...Respondents

...

Mr. Mandar Soman for the Petitioner.

Ms Janhavee Joshi with Mr. Sadaf Maldar for Respondent Nos.2 to 4.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th AUGUST, 2023.

P. C. :-

1. At the outset learned counsel for the parties seek leave to delete the name of Respondent No.1. Leave is granted. Cause title to be amended forthwith.
2. With consent the matter is heard finally at the stage of admission.
3. The Petitioner herein challenges legality of show cause notice dated 27/02/2023 issued by the Bailiff of Small Causes Court under Order 21 Rule 97 of the CPC.
4. Heard Mr. Soman, learned counsel for the Petitioner and

Ms Joshi, learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The Petitioner is the owner of the suit premises i.e residential tenement No.1925, admeasuring 459 sq meters, ground + first floor situated in Block No.241, MHADA Housing Colony Motilal Nagar No.1. The Petitioner and Respondent No.1 entered into leave and license agreement dated 13/02/2017 pursuant to which Respondent No.1 was inducted in the premises as a licensee. The Petitioner herein filed Eviction Application No.67 of 2019 under Section 24 of the Maharashtra Rent Control Act seeking eviction of Respondent No.1 from the suit premises. The said eviction application was allowed and an eviction decree dated 29/08/2019 was passed against the Respondent No.1.

6. The Petitioner filed an execution application No. 129 of 2019 for execution of the said decree. The stay application filed by Respondent No.1 as well as intervention application filed by Respondent Nos.2 to 4 was rejected by the Appellate Authority. The said order was challenged in Writ Petition No.12438 of 2019. By

order dated 10/12/2019 the writ petition came to be admitted and execution of the eviction decree was stayed. Subsequently, the Petitioner filed an interim application inter alia seeking deposit of compensation. By order dated 24/08/2022 this Court directed the Respondent No.1 to deposit the arrears of license fee, as per the order dated 29/08/2019, within a period of eight weeks, failing which the writ petition would be dismissed without further reference to the court.

7. Respondent No.1 having failed to deposit the arrears, the Applicant preferred an application for taking the execution proceedings on board and prayed for issuance of warrant of possession. Accordingly, the Competent Authority issued warrant of possession dated 24/02/2023. The Petitioner claims that on 27/02/2023 when he alongwith the Bailiff-Amit Vedpathak and the police staff had proceeded to the suit premises to execute the warrant of possession, the Respondents No.2 to 4 resisted execution of warrant of possession. The Bailiff prepared a report wherein he recorded that Respondent No.1 was not present in the premises and that Respondent No.2 and his family members obstructed execution of the said warrant. The Bailiff also prepared a panchanama dated

27/02/2023 wherein he recorded that he was unable to execute the warrant of possession because of the obstruction caused by Respondent No.2 and his family members. The Bailiff thereafter proceeded to issue show cause notice dated 27/02/2023 purportedly under Order 21 Rule 91 calling upon Respondent No.2 to give explanation within two days as to why action should not be taken against him for obstructing execution of warrant. The Bailiff further informed Respondent No.2 that in the event he failed to give reply to the said notice further action would be taken against him. The Petitioner herein has challenged the said show cause notice dated 27/02/2023.

8. The records reveal that on the basis of the report submitted by the Bailiff and the show cause notice given by the Bailiff, the Competent Authority directed the Petitioner to add the obstructionist as party Respondent to execution proceedings. Learned counsel for the Petitioner states that the Bailiff is in hand in glove with the Respondent and is trying to assist the Respondent in starting another round of litigation.

9. Suffice it to say that the role and the duty of the Bailiff was only to execute the warrant of possession and to submit the report

confirming execution of the warrant or the reasons for non-execution of the same. In the event of any obstruction within the meaning of Order 21 Rule 97, that has to be dealt with specifically under the said provision. Suffice it to say that the Bailiff has absolutely no authority under the Act to suo moto to issue show cause notice to Respondent No.2 and or to adjudicate the issue between the decree holder and the obstructionist. The manner in which the Bailiff has acted, prima facie supports the contention of the Petitioner that he is assisting the Respondent Nos.2 to 4 to start a second round of litigation despite rejection of earlier intervention application filed by the Respondent Nos.2 to 4 and failure on their part to deposit arrears of license fee.

10. Under the circumstances the impugned notice dated 27/02/2023 is quashed and set aside. The Competent Authority to enquire into the matter and to take appropriate action against the Bailiff, if necessary.

11. The Writ Petition stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)