

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4894 OF 2023

Arvind Narayan Vaishampayan

...Petitioners.

Versus

M/s Abhang Housing Corporation & Ors.

..Respondents.

Mr. P.R. Arjunwadkar i/b Ms. Prabha Badadare for the petitioner.
Mr. D.S. Mhaispurkar for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : July 21, 2023.

P. C. :

1. The challenge in the petition is to the order dated 31st January 2023 passed by the appellate court on the interim application filed by the petitioner seeking stay on the execution proceedings being Regular Darkhast No.53 of 2014 pending before the joint civil judge junior division, Kalyan.

2. Learned counsel appearing for the petitioner submits that the previous suit being regular civil suit no. 305 of 1999, which was filed by the respondent plaintiff seeking eviction, was decreed. The proceedings were carried up to the apex court and by order dated 13th January 2019, 3 months time was granted by the Apex Court to vacate

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the premises. It is the contention of the learned counsel appearing for the petitioner that as regards the eviction decree, he has no cause to complain. He submits that subsequently in the year 2019, RCS No.281 of 2019 was instituted by him seeking enforcement of an agreement of the year 1986 which was an agreement for permanent alternate accommodation. He would contend that even if his rights as tenant have been extinguished his rights under the said agreement are subsisting. He would further submit that the said suit came to be dismissed under the provisions of Order 7 rule 11(d) of the CPC. However he would urge that the issue of res judicata was held in his favour and the suit was dismissed only on the ground of limitation. He would further submit that he has good case on merits before the appellate court and as such the stay should be granted.

3. Per contra learned counsel appearing for the respondent has pointed out that by the application what the petitioner is seeking is stay of the execution proceedings which have been instituted in regular civil suit no. 305 of 1999. He would further submit that the agreement that is the permanent alternate accommodation agreement was executed in the year 1986 and as such the same is barred by law of limitation.

4. Considered the submissions.

5. The only issue which arises before this court in the present proceedings is the impugned order dated 31st January 2023 rejecting the petitioner's application for stay in the appellate proceedings. If we peruse the application for stay filed by the petitioner, the prayer is to stay the Regular Darkhast No.53 of 2014. It is not disputed that the said execution proceedings have been instituted to execute the decree passed in eviction suit being RCS No.305 of 1999, which decree has been confirmed right upto the apex court. In fact the apex court has vide order dated 13th February 2019 granted 3 months time to the petitioners to vacate the premises. It appears that to circumvent the orders of the apex court RCS no. 281 of 2019 came to be instituted.

6. Be that as it may. Upon repeated query by this court as to the power of the appellate court in the suit of 2019 to stay the orders passed by the executing court in the execution proceeding of suit of 1999 which has been confirmed right upto the apex Court, there is no answer forthcoming. Learned counsel for the petitioner harps on the issue that the Regular Darkhast No. 53 of 2014 is required to be stayed.

7. It needs to be kept In mind that in the present petition this court is not hearing the challenge to the dismissal of suit under order 7 rule 11d of CPC and the only issue which requires determination in the present proceedings is whether the petitioner is entitled to the stay of execution proceedings being Regular Darkhast No 53 of 2014. The appellate court while rejecting the application has rightly considered that the issue has been settled right upto the apex court and that it appears that the present application is a delaying tactics to kill the time one way or the other, when the issue is finalised by the apex court. There is no provision of law at least demonstrated to this court which would entitle the appellate court in a separate proceedings initiated to stay the order of the apex Court passed in eviction proceedings.

8. In view of the above, there is no merit in the application. It appears that the application in question has been preferred only for the purpose of delaying the execution of decree passed in the of the year 1999 which has been confirmed right upto the apex Court. Writ petition is totally devoid of merits and stands dismissed.

[Sharmila U. Deshmukh, J.]