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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 336 OF 2023

Milind Bhimdas Jadhav ...Applicant
Versus
Smt. Anjana Shambhuprasad Patel & Ors. ...Respondents

Mr. Noman Jafri, i/b. Mr. Rakesh Kamble, for the Applicant.

Mr. Ashutosh M. Dube, for Respondent No.2.

Mr. Milind Bhimdas Jadhav, Applicant present in person.

Ms. Anjana S. Patel, Respondent No.1 present in person.

CORAM : MADHAV J. JAMDAR, J.

DATED : 5th JULY 2023

P.C. :

1. Heard Mr. Noman Jafri, learned counsel appearing for the Applicant, Ms. Anjana Shambhuprasad Patel, Respondent No.1 in person and Mr. Ashutosh M. Dube, learned counsel appearing for Respondent No.2.

2. By the present Civil Revision Application, the Applicant who is the Judgment Debtor No.3 is challenging the legality and validity of

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the impugned order dated 17th June 2023 passed by the learned 3rd Joint Civil Judge, **Senior** Division, Kalyan below Exhibit-57 in Special Darkhast No.14 of 2019. By the impugned order, said application bearing Exhibit-57 filed by the Judgment Debtor seeking dismissal of the said Special Darkhast was rejected.

3. It is the contention of the Applicant i.e. Judgment Debtor No.3 that the decree of eviction is sought to be executed not against the suit premises but against some other premises.

4. Before considering the merits of the contentions of the Applicant, it is necessary to set out certain factual aspects:-

a) Respondent Nos.1 to 3 i.e. Plaintiffs/Decree Holders executed leave and license agreement dated 23rd September 2003 with original Defendant No.1 i.e. present Respondent No.5-Rafeeq Mohiddin Malbari for a period of 33 months with monthly compensation of **Rs.450/-**. The said license period under the said agreement expired on 31st **May** 2006. The Defendant Nos. 2 and 3 claimed to be the servants of the Defendant No.1 and they trespassed into the suit property and are occupying the suit property

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prior to 2006.

b) The Plaintiffs filed Suit No.193 of 2012 inter alia seeking eviction against all the Defendants. The said suit was decreed by the learned Trial Court on 15th November 2017.

c) The said eviction decree was challenged by the Defendant No.3 i.e. present Applicant and legal heirs of **Defendant No.2** (Defendant No.3 is the son of the Defendant No.2) by filing Civil Appeal and as there was delay in filing the said Civil Appeal, Civil Miscellaneous Application No.56 of 2018 was filed. Learned District Judge rejected the said application by order dated 3rd January 2022.

d) The Defendant No.3 as well as the legal heirs of Defendant No.2 filed Writ Petition (ST) No.29404 of 2022. A learned Single Judge by order dated 14th February 2023 considered even the merits of the case and dismissed the Writ Petition by imposing exemplary cost of Rs.25,000/-. The learned Single Judge has found that,

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inter alia the present Applicant has no right, title and entitlement of whatsoever nature to occupy the suit premises and that said Defendant Nos. 2 and 3 are the trespassers and they have taken advantage of legal system and they have abused the due process of law.

e) The said order dated 14th February 2023 was challenged by the present Applicant in the Supreme Court and the Supreme Court dismissed the said SLP by order dated 24th March 2023.

f) In the meanwhile, the decree holders i.e. Respondent Nos. 1 to 3 filed said Darkhast No.14 of 2019 and in said Darkhast, Application bearing Exhibit-56 was filed by the Applicant who is Defendant No.3/Judgment Debtor No.3 taking objection to the execution of the decree on the ground that decree sought to be executed against some other premises which are not the suit premises. The said application is rejected by the impugned order dated 17th June 2023.

5. Perusal of the plaint as well as the application for execution of

decree i.e. said Darkhast Application show that the premises mentioned as suit premises in Special Civil Suit No.439 of 2008 (converted into Regular Civil Suit No.193 of 2012) are the same premises as mentioned in the said Darkhast Application. It is further significant to note that, in the plaint, in paragraph No.2 details of suit premises are given. In the written statement while dealing with the said contention, the same is not denied and in fact, the same is accepted. Therefore, there is no substance in the contention raised by the Applicant.

6. When this Court expressed that there is no merit in this Civil Revision Application and the Civil Revision Application deserves to be dismissed and exemplary costs are required to be imposed as the Applicant is deliberately delaying the execution of the eviction decree passed against the Applicant i.e. Judgment Debtor No.3, which has been confirmed upto the Supreme Court, learned counsel Mr. Noman Jafri after taking instructions from Mr. Milind Bhimdas Jadhav-Applicant/Judgment Debtor No.3, who is present in the Court stated that the Applicant is seeking withdrawal of the Civil Revision Application and only request made is to grant time to vacate the suit premises by 31st July 2023. Therefore, the matter was kept back for

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some time so as to enable the Applicant to file the undertaking in this Court.

7. At 2.30 p.m., Mr. Noman Jafri, learned counsel of the Applicant tenders the undertaking dated 5th July 2023 of the Applicant-Milind Bhimdas Jadhav and self-attested photocopy of Aadhar Card of the Applicant. The said undertaking and Aadhar Card are taken on record and marked “X” and “X1” respectively for identification.

8. Paragraph No.1 of the said undertaking reads as under:-

“1. I undertake to vacate the suit premises i.e. Municipal House No.25 known as Shambhu Building, Chalta No.589, Village Mohane, Taluka Kalyan, District Thane on or before 31.07.2023 and hand over vacant and peaceful possession to Respondent No.1 i.e. Mrs. Anjana Shambhuprasad Patel.”

The Applicant who is present in person in the Court also confirms the above undertaking. Accordingly, the undertaking given by the Applicant is accepted as the undertaking given to this Court.

9. Accordingly, the Civil Revision Application is allowed to be withdrawn and dismissed as such. However, the Applicant is granted

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time to vacate the suit premises till 31st July 2023.

10. To ensure the compliance of this order, the Civil Revision Application be listed on 2nd August 2023 in the category of compliance.

[MADHAV J. JAMDAR, J.]

Note: This order is modified as per order dated 5th July 2023. The corrections are shown in paragraph No.2, Paragraph No.4(a) and 4(c) in bold.