

Dusane

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

WRIT PETITION NO. 10242 OF 2023

Mr. Abdul Bari Abdul Basit ...Petitioner
Qureshi

V/s.

Mr. Pramod Ramvilas Malpani ...Respondent

Mr. Ajit V. Alange for Petitioner.

Mr. Nachiket Khaladkar for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATE: 19th August 2023

P.C.:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the Petitioner, who is the obstructionist, has challenged the legality and validity of the order dated 28th July 2023 passed by the learned 7th Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune below Exhibit 24 in Darkhast Proceeding No. 49 of 2021. The Petitioner claims to be the sub-tenant inducted by tenant.

2. It is an admitted position that one Keshrimal Maganlal Soni was the original tenant of the suit premises. The suit for

eviction was filed against him on 20th August 1976, bearing Civil Suit No. 2142 of 1976 and the same was decreed on 5th June 1980. The said judgment is confirmed upto the High Court. Thereafter also the original tenant- Kesharimal Soni took out certain proceedings for setting aside the decree which has been confirmed upto the High Court and order in favour of the original tenant was passed by the learned District Court. However, this Court in Writ Petition No. 706 of 1993 set aside the order of the learned District Court passed in favour of the tenant and specifically held that decree can be executed against the original tenant

3. After issuance of possession warrant in consonance with the order of the High Court passed in Writ Petition No. 706 of 1993, the present Petitioner/obstructionist appeared before the learned Executing Court claiming himself to be the deemed tenant. It is his contention that the original tenant has executed agreement dated 6th January 1992 in his favour and on the basis of said agreement, he claimed to be the sub-tenant.

4. The learned executing Court by order dated 28th July 2023 held that in the absence of the contract to the contrary, it shall not be lawful from 1st February 1973 to create sub-let tenancy and therefore the present Petitioner has no right, title and interest

5. In the present case, the decree was passed against the tenant on 5th June 1980, which has been confirmed upto this Court. Thereafter the said alleged agreement dated 6th January 1992 of creation of sub-tenancy was executed by original tenant/judgment debtor in favour of the Petitioner/Obstructionist. As per the applicable provision of the law, it shall not be lawful from 1st February 1973 to create sub-let tenancy. Therefore, it is clear that the Petitioner/ obstructionist cannot claim any right on the basis of said alleged agreement of sub-tenancy.

6. Therefore, there is no substance in the present Writ Petition. No interference under the discretionary jurisdiction of this Court under Article 227 of the Constitution of India is warranted.

7. At this stage, Mr. Alange, learned Counsel appearing for the Petitioner, after taking instructions from the Petitioner, states that the Petitioner accepts the order passed by the learned executing Court dated 28th July 2023 in Darkhast Proceeding No. 49 of 2021 as well as this order. Mr. Alange states that the Petitioner's only request is that he be granted time of one month to vacate the suit premises. The Petitioner, who is present in the Court, undertakes and also filed an affidavit stating that he will

vacate the suit premises within one month from today. Accordingly, the said affidavit/undertaking is taken on record and marked '**X**' for identification. The undertaking given by the Petitioner that he will vacate the suit premises within one month is accepted.

8. Accordingly, the Writ Petition is dismissed, however, the Petitioner is granted one month's time to vacate the suit premises.

9. It is made clear that if the Petitioner fails to vacate the suit premises within one month, then apart from other proceedings, it is open to the Respondent to initiate contempt proceedings against the Petitioner.

10. The Writ Petition is dismissed in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)