

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

WRIT PETITION NO.10883 OF 2023

Ballam Trifla Singh

..... Petitioner

Vs.

Gyan Prakash Khukla and Ors.

..... Respondents

Mr. R. A. Thorat i/b Ms. Pratibha Shelake for the Petitioner.

Mr. Ashok R. Pandey a/w. Mr. A. R. Pandey and Ms. Shobhit Shukla for Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 3rd NOVEMBER 2023.

P. C.

1. Heard.

2. The challenge in the Petition is to the order dated 10/8/2023 dismissing the Revision Application filed by the Petitioner herein challenging the order dated 1/3/2022 rejecting the Petitioner's Application below Exhibit 18 in Marji Application No.33/2017 seeking framing of issues in the said Marji Application. The Application came to be rejected on the premise that the Application is not an obstructionist's notice under the

provisions of Order 21 of CPC and as such the procedure contemplated therein is not required to be followed. In addition, the dispute arose in respect of the identity of the premises as to whether the premises in respect of which Marji Application No.33/2017 was filed is the suit premises or some other premises.

3. Mr. Thorat, learned Senior advocate appearing for the Petitioner submits that an additional affidavit will be filed in this Court within a period of one week from today stating that the premises in respect of which Marji Application No.33/2017 is filed and the suit premises are one and the same.

4. In view of the submission of Mr. Thorat, Mr. Pande appearing for Respondent submits that in view of the statement made by Mr. Thorat the Application which has been filed i.e. Marji Application No.33/2017 be treated as obstructionist's notice under Order 21 of CPC.

5. As such the proceedings will take as far as possible the nature of the suit and issues will have to be framed and evidence led.

6. Pertinently, Rule 103 of Order 21 of CPC which provides that the order made on an Application under Rule 98 or Rule 100 shall have the same force and be subject to same conditions as to an Appeal as if it were a decree lends credence to the position that issues are required to be framed in the Marji Application No.33/2017.

7. Mr. Pandey, learned counsel appearing for the Respondents submits that in view of the fact that additional affidavit is being filed that the premises forming the subject matter of Marji Application No.33/2017 and the suit premises being one and the same, the Marji Application can be permitted to be treated as obstructionist's notice and the impugned order therefore be quashed and set aside.

8. For the reasons stated above, the impugned order dated 10/8/2023 is hereby quashed and set aside. Consequently Application below Exhibit 18 filed by the Petitioner in Marji Application No.33/2017 is allowed.

9. Since the suit is of the year 1996 which came to be

decreed in the year 2016, the executing Court is requested to decide the obstructionist's notice expeditiously and in any event within a period of 6 months from today.

SHARMILA U. DESHMUKH, J.