

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 778 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 15573 OF 2023

Sharda Vishwanath Shetty

...Appellant

V/s.

The Board of Mumbai Port

Authority and anr.

...Respondents

Mr. S.P. Shrivastava, for the Appellant.

Mr. Roop Basu i/by. M/s. The Law Point, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 21 September 2023.

P.C. :

1. The Appellant has filed the present petition challenging the order dated 6 September 2023 passed in draft Notice of Motion by which the City Civil Court has proceeded to reject Appellant's draft Notice of Motion. His application for grant of *status-quo* till availability of certified copy of the order, has also been rejected on 8 September 2023.

2. It appears that the Respondent-board has assumed that decree for possession of the suit property involved in L.E.& C. Suit

No. 58/72 of 1978 includes Room No.203. On account of obstruction created by certain individuals in execution of the decree, the Board was required to file Obstruction Notice No. 95/1985 against various persons which came to be allowed vide order dated 13 July 1987 issuing a general order entitling the Board to recover possession of the suit premises by removing the obstruction caused to the execution proceedings by anyone found in the suit premises at the relevant time. It appears that the Obstructionists kept on challenging the said proceedings. Finally, the application of the Obstructionist came to be decided and rejected on 1 August 2023. The Small Causes court has issued warrant of possession on 6 July 2023 for taking over possession of the suit premises.

3. In this background, the Plaintiff who claims to be in possession of the residential structure bearing Room No.203, filed S.C. Suit No. 2105/2023 seeking injunction against the Defendant-Board from dispossessing her from Room No.203 without following the due process of law. The application filed for seeking temporary injunction has been rejected by the City Civil Court.

4. The learned counsel for the Appellant would contend that the Appellant-Plaintiff was not made party to the Obstruction Notice No. 95/1985. That if the Defendant-Board is of the opinion that the Appellant-Plaintiff is obstructing to the execution of the decree, the Board must file obstructionist notice before the Executing Court and without obtaining necessary orders from the Executing

Court, the Appellant-Plaintiff cannot be dispossessed in respect of Room No.203. He would submit that the Appellant-Plaintiff does not have any other remedy in respect of the Board's high handed action of seeking to recover possession of Room No.203 as the Appellant-Plaintiff was not even a party to the Obstructionist Notice No.95./1985. That therefore she has rightly exercised the remedy of approaching the City Civil Court by filing a fresh suit to restrain the Board from dispossessing her without following due process of law.

5. After considering the submissions advanced by the learned counsel for the Appellant, it is seen that under the provisions of Order 21 Rule 99 of the CPC, any person other than the judgment-debtor, on his dispossession from an immovable property by a decree-holder is entitled to make an application to the Executing Court complaining of such dispossession. This could be the correct remedy for the Appellant-Plaintiff to buttress her case that she is in lawful possession of Room No.203 or that the decree does not cover Room No.203. She cannot file parallel proceedings before the City Civil Court in the nature of a fresh suit for deciding whether her dispossession in respect of Room No.203 is valid or not. The said issue can only be decided by the Executing Court. In that view of the matter, it is difficult to hold that any *prima-facie* case was made out by the Appellant for grant of discretionary relief of temporary injunction. No error can be traced in the order of the City Civil Court rejecting the Notice of Motion. The Appeal being devoid of merits is **dismissed** without any orders as to costs. It is clarified that the observations made in this order are *prima-facie* to

decide Appellant's entitlement for temporary injunction and the City Civil Court shall not be influenced by those observations while deciding the suit.

4. With dismissal of the Appeal, Interim Application No. 15573/2023 filed for injunction does not survive. The same is disposed of as having become infructuous.

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SANDEEP V. MARNE, J.