

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

**WRIT PETITION NO. 8529 OF 2023**

Mr. Prakash Vallabhbhai Gohil

... Petitioner

Vs.

Mr. Harilal S/o. Arjan Vashram Gohil and Ors

... Respondents

-----  
Mr.Piyush M. Shah, Advocate for Petitioner.  
-----

**CORAM : ABHAY AHUJA J.  
DATE : 14<sup>th</sup> JULY 2023**

**PC :**

1. This Petition has been filed under Article 227 of the Constitution of India impugning the judgment and order dated 16<sup>th</sup> July 2022, in Miscellaneous Appeal No.80 of 2017 passed by the Small Causes Court, Mumbai (Bandra Branch) dismissing the Appeal.

2. Mr.Piyush Shah, learned Counsel for the Petitioner would submit that this Petition has been filed in view of the observation made against the Petitioner with regard to the independent tenancy rights in respect of the suit premises claimed by the Petitioner being subject matter of R.A.D

Suit No.457 of 2012 filed by the Petitioner in the Small Causes Court Mumbai (Bandra Branch) for being declared as tenant.

3. Earlier a decree of eviction was passed against the father of the Petitioner in respect of suit premises being Narayan Premaji Chawal, House No. 32, Plot No. 248, C.T.S. No. 1685, 1685/1-9, Kankuwadi, Phirozshah Mehta Road, Ville Parle (East), Mumbai 400 057 in R.A.E. Suit No.76 of 2006, who was the defendant No.2 in the said suit. The Petitioner was residing in the suit premises with his father. The father of the Petitioner preferred an appeal before the Appellate Court, which was also dismissed. Therefore, the decree of the Trial Court and the Appellate Court attained finality as no further challenge was preferred by the father or the Petitioner. Pursuant to the said decree in the said suit having attained finality, on 23<sup>rd</sup> December 2013, Bailiff came to the suit premises along with the son of the original plaintiff in the said suit and attempted to execute the decree, when the petitioner and his wife obstructed the execution stating that they had filed RAD Suit No. 457 of 2012 for declaration of tenancy rights in respect of the same suit premises, which according to Petitioner is pending.

4. It is the case of the Petitioner that the Bailiff did not listen to them and with the help of the Police had the suit premises vacated, after which the Petitioner filed Marji Application No.11 of 2014 in Execution Application No.83 of 2013 for restoration of possession of the suit premises. The original plaintiff in the said earlier suit resisted the Marji Application by filing reply through his constituted attorney submitting that the decree of eviction had been passed against the father of the Petitioner, who was defendant No.2 in the original suit and the Bailiff executed the warrant of possession by following due process of law and that the judgment and decree passed against the father of the Petitioner was binding on all the persons including the Petitioner; that Petitioner did not have any independent tenancy right. It was also stated in the reply that the Petitioner had filed similar application for restoration of possession in RAD Suit No.457 of 2012 and the same was rejected by the Court as no case was made out for restoration. It was, therefore, prayed that the Marji Application be rejected.

5. After hearing both the sides and after going through the record in the case, the Trial Court dismissed the Marji Application by passing a detailed order on 3<sup>rd</sup> December 2015.

6. Being aggrieved and dissatisfied by the said order, the Petitioner preferred a Miscellaneous Appeal No.80 of 2017 before the Appellate Bench of the Small Causes Court at Mumbai (Bandra Branch).

7. The Appellate Bench heard the matter and observing that the Petitioner had also filed a similar application for restoration of possession in RAD Suit No.457 of 2012 which was rejected by the Trial Court by order dated 5<sup>th</sup> March, 2014, after which the appellant has preferred the subject Marji Application No.11 of 2014 before the Executing Court and that it was not open for the party to agitate a similar point again and again before a Court for seeking the same relief being barred by principles of *res judicata*, dismissed the appeal with costs on 16<sup>th</sup> July 2022.

8. In paragraph 15, the Appellate Bench on the basis of the Bailiff's report observed that there was no irregularity or illegality in the execution of the decree and that it was not open to the Petitioner to seek restoration of possession again as no evidence was produced by him to show his independent right, title and interest in the suit premises. That the rent receipt filed by the Petitioner stood in the name of original grand-father, who was the original tenant of the suit premises. That the Ration Card

produced on record showed the name of the Petitioner alongwith other persons. That tenancy rights could not be decided on the basis of Ration Card and Gas Card. It was held that there was no illegality found in executing the warrant of possession by the Bailiff and that the allegations were devoid of any substance. Observing thus the Appellate Bench dismissed the Appeal with costs.

9. Aggrieved by the aforesaid judgment and order of the Appellate bench the Petitioner has filed this Petition.

10. I have heard Mr. Shah, learned Counsel for the Petitioner, perused the impugned order as well as the proceedings and I am of the view that the petition deserves to be dismissed in limine without even issuing any notice.

11. It is not in dispute that, R.A.E. Suit No.76 of 2006 had been decreed against the father of the Petitioner and the challenge thereto had also been dismissed by the Appellate Court, thereby the decree of eviction against the father of the Petitioner had become final. It is also not in dispute that

the Petitioner was residing at the suit premises at the time the Bailiff visited the suit premises for executing the warrant of possession. The warrant of possession came to be executed and the Petitioner and his wife were dispossessed from the suit premises after which the Petitioner filed an application at Exhibit-28 for restoration of possession in RAD Suit No.457 of 2012, which he had filed earlier for declaration of tenancy in respect of the same suit premises, which application came to be rejected on 5<sup>th</sup> March, 2014. It is after this rejection that the Petitioner filed Marji Application No.11 of 2014 in Execution Application No.83 of 2013 in the earlier R.A.E. Suit No.76 of 2006 for restoration of possession before the Executing court which came to be rejected on the ground that once relief has been rejected by passing order on merits, it is not open for the party to agitate the same point again and again before Court seeking same relief. Against this rejection an appeal was filed before the Appellate bench being Miscellaneous Appeal No.80 of 2017 which came to be dismissed by the Appellate Bench imposing costs on the Petitioner by judgement dated 16<sup>th</sup> July 2022.

12. I have perused the said judgment and order dated 16<sup>th</sup> July 2022 and do not find any jurisdictional error or illegality or perversity. In my

view, the Appellate bench of the Small Causes Court has correctly observed that the decree passed in R.A.E. Suit No.76 of 2006 is binding on the Petitioner. Petitioner cannot claim any independent right or title in respect of the same suit premises as a tenant which was contested as a tenant. The earlier suit admittedly was contested by Petitioner's father by pleading and deposing that he was residing in the suit premises alongwith his sons including the Petitioner and it is after recording evidence that the said suit came to be decreed in favour of the plaintiff in the said earlier suit which decree has become final. The Petitioner is attempting to agitate the same issue again and again before the Courts for seeking the same relief despite rejection by Courts passing orders on merit which cannot be countenanced. Without saying anything more, the Writ Petition is dismissed.

**(ABHAY AHUJA, J.)**