

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13560 OF 2022

Dnyandeep Shikshan Sanstha
V/S

....Petitioner

Prakash Ramdas Kasar & Ors.

....Respondents

...

Mr Shailesh Chavan i/b Mr. Milind Deshmukh for the Petitioner.
Mr. Narayan Bubna for Respondents.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 23 JANUARY 2023.

P.C.:

1 On 14 December 2022 when this Petition came up for hearing, this Court had passed following order:

“1 Heard the learned Advocate for the Petitioners. He has tendered an affidavit on behalf of Petitioner Nos.1 to 8 dated 19.11.2022.

2. The affidavit is filed in view of the query which had come from this Court as to when Petitioner No.1 will vacate the suit premises. Petitioner No.1 has stated in the said affidavit that it is an educational institution registered under the provisions of Bombay Public Trust Act. Petitioner No.1 has stated that it is difficult to vacate the suit premises on urgent basis as number of students are studying in the Educational Institute and it is mid-term period of the Academic Year. Accordingly, time has been sought for vacation of the suit premises till the end of Academic Year 2022-23.

3 The learned Advocate appearing for the Petitioners states on instructions that the Petitioner No.1 being the Educational Institution, Petitioner No.2 Chairman and Petitioner Nos.3 to 8 Trustees of the Educational Institution, will vacate the suit premises by 31.03.2023. Statement is accepted.

4 In view of the statement, the possession warrant issued in respect of the suit premises on 15.10.2022 shall not be given effect to.

5 Place the Writ Petition on 04.01.2023.”

2 Mr. Bubna, learned Counsel appearing for Respondent points out the past conduct of Petitioner by inviting my attention to the order dated 14 June 2022 passed in Writ Petition No.2408 of 2022 which reads thus:

“1) On instructions, a motion is made by the counsel for the Petitioners for withdrawal of the Petition.

2) Petition stands dismissed as withdrawn.

3) However, this will not preclude the Petitioner from taking recourse to such other proceedings as are permissible and available in law.

4) Counsel for the Petitioner, in response to the submissions made by Mr. Sathaye, Decree-holder, makes a statement that entire arrears shall be deposited in the Executing Court within period of 6 weeks from today.

5) Statement is accepted as an undertaking.

6) If the proceedings are taken out, same be decided in accordance with law.

7) Interim relief to continue for a period of two weeks from today.”

3 Mr. Bubna submits that despite giving undertaking to this Court, Petitioner has failed to deposit the arrears of rent within the agreed period. He would further invite my attention to two more undertakings given by the Petitioner before the Executing Court for handing over possession and for payment of arrears and he would submit that even those undertakings are

breached. Mr. Bubna would therefore submit that this Court may not pass any equitable order in favour of the Petitioner who has consistently breached its obligation.

4 Now that the Petitioner has already made a statement to vacate the premises by 31 March 2023, in my view, this Petition can conveniently be disposed of with a direction that in the event of failure on the part of the Petitioner to vacate the premises by 31 March 2023 the Executing Court shall execute the possession warrant by taking police aid.

5 The Respondents would be entitled to press the execution proceedings for recovery of arrears of rent and this order and the earlier order dated 14 December 2022 would not be construed to mean an impediment in the same.

6 With above direction, Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)

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signed by
SUDARSHAN
RAJALINGAM
KATKAM
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