

SA Pathan

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

WRIT PETITION NO.15437 OF 2023

Dashrath Shankar Choudhari

... Petitioner

V/s.

Nanaso Shankar Choudhari (Since
Deceased) Through Legal Heirs & Anr

... Respondents

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Mr. Saurabh Oak a/w Ms. Dhanshri Bhate, for
Petitioner.

Mr. Manisha Devkar and Mr. Shankar Katkar and Ms.
Siddhi Patil, for Respondents.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 20, 2023

P.C.:

1. Filing of this writ petition is the instance by the litigant to approach this Court and seek ex-parte order by misleading the Court.
2. The impugned order was passed on 5 October 2023. The writ petition was filed on 9 November 2023; however, on 8 December 2023, the matter was mentioned at 2:30 pm, it was submitted that the result of execution of order demolition of property.
3. Considering the said urgency, this Court directed the office to

produce papers at 4:30 pm on 8 December 2023, and at 4:30 pm the impression was create that the order challenged in the writ petition was passed by the Appellate Court, and substantive appeal against decree for demolition is pending.

4. Relying on the said submission, this Court in paragraph 2 of the order dated 8 December 2023 has observed as under:

“ 2. By the impugned order, the Appellate Court has rejected the application for stay in an appeal challenging decree for possession. Since, the petitioner has filed substantive appeal under Section 96 of the Code of Civil Procedure, 1908 wherein questions of both facts and law can be agitated. Therefore, Appellate Court ought to have granted stay to the decree for possession.”

5. Despite such observations, till 19 December 2023, the petitioner did not move before this Court for correction of observations made in paragraph 2. The observations made in paragraph 2 were totally uncalled for as the Appellate Court by order dated 2 September 2022 had rejected the application for stay to the decree. The petitioner had filed Writ Petition No.11924 of 2023 before this Court and this Court by order dated 24 January 2023 dismissed the said writ petition.

6. Without pointing out order of this Court dated 24 January 2023, a submission was made that there is likelihood demolition of property.

7. The respondents had filed Caveat in relation to order dated 5 October 2023 which is subject matter of the present writ petition.

The receipt of registered post (R.P.A.D) indicates that the Caveat was served upon petitioner on 12 October 2023. Despite service of notice of Caveat, the Advocate for the respondents was not informed about the order of production of papers at 2:30 on 8 December 2023.

8. The cumulative effect creating impression that order under challenge was passed by the Appellate Court in a substantive appeal and despite receipt of Caveat, no given notice to the Advocate for respondents indicates that petitioner has intentionally suppressed material facts from this Court and by giving wrong impression persuaded this Court to pass order which is not legally sustainable.

9. Such conduct of petitioner can be countenanced. Therefore, it is necessary that exemplary cost should be imposed on the petitioner. Hence, it is directed that the petitioner shall pay Rs.25,000/- to the respondents within 4 weeks from today.

10. In case, petitioner fails to pay to the respondents amount of Rs.25,000/-, the respondents will be at liberty to recover the said amount as arrears of land revenue.

11. For the reasons mentioned above, the writ petition cannot be entertained. Hence, the writ petition is dismissed. No costs.

(AMIT BORKAR, J.)