

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 572 OF 2023

Shaila Prveen Islahoddin __ Vs. __ Haji Salaluddin Alauddin and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Sk.SJagirdar , Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 03/02/2023

1] Civil Application (W) No.363/2023 is for amendment of the petition.

2] Since notices have not been issued, the application is allowed. The amendment be carried out forthwith.

3] The only contention raised is that the order below Exh.15 which is an application filed by the defendant seeking temporary mandatory injunction whereby the present petitioner/plaintiff was directed to remove the lock placed by her on the suit property of defendant no.1 within one month has been put to execution under Order 21 of CPC by filing execution proceeding RD No. 221/2022 which execution proceedings, according to the learned counsel for the petitioner, are not maintainable, in view of the provisions of Order 39 Rule 2A of CPC and therefore, the impugned order dated 7.12.2022 which has been passed in RD No. 221/2022 (pg.139) is required to be quashed and set aside.

4] The learned Court in RCS No. 417/2019 while deciding Exh.5 filed by the plaintiff, Exh.15 filed by the defendant no.1 and Exh. 20 by the plaintiff, by the order dated 26.2.2020 (pg.99) rejected Exh. 5 and Exh.20 and allowed Exh.15 directing the plaintiff to remove the lock placed by her on the property of the defendant no.1 within one month. An appeal filed by the petitioner/plaintiff against the order dated 26.2.2020, came to be dismissed on 7.12.2020 and W.P. No. 3290/2021 thereagainst came to be dismissed on 2.9.2021, whereby the order below Exh. 15 stood confirmed.

5] The contention that Order 21 of CPC would not be attracted in view of the remedy available under Order 39 Rule 2A of CPC is clearly fallacious for the reason that Section 36 of the CPC makes the provisions of the Code relating to the execution of decrees applicable to the execution of orders. That being the position, the contention has no merit. The petition is therefore without any substance and the same is rejected.

JUDGE

Rvjalit

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Signing Date:03.02.2023 18:39