

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 98 OF 2024****WITH****IA/1485/2024 IN SA/98/2024**

Kalhyani Krushna Mhatre Alias

Shailaja Govind Patil

...Appellant

Versus

Ajit Yashwant Todankar

...Respondent

....

Mr. Ojas Kacharekar, for Appellant.**Mr. Gaurav Parkar**, for Respondent.

....

CORAM : SANDEEP V. MARNE, J.**DATED : 14 FEBRUARY 2024.****P.C. :**

The challenge in the present Appeal is to the Judgment and Order dated 16 December 2023 passed by the District Judge-3, Raigad-Alibag dismissing the Appellants Regular Civil Appeal No.07 of 2023 and confirming Order dated 04 February 2023 passed by the 3rd Jt. Civil Judge, Junior Division, Alibag.

2. It appears that Plaintiff's suit bearing Regular Civil Suit No.98 of 2001 was decreed on 27 February 2012 directing Defendant Nos.1 to 3 to demolish the construction in the suit property and to handover possession thereof to the Plaintiff. It appears that the decree has been upheld up to the

Apex Court. When the decree was put in execution, Appellant filed application under provisions of Order 41, Rule 97 claiming possession of the suit property.

3. The obstruction of the Appellant was premised on an assertion that her mother Radhabai Patil was the tenant in respect of suit property. The executing Court rejected the obstructionist's application by Order dated 04 February 2023.

4. Appellant filed Regular Civil Appeal No.07 of 2023 challenging the Order of the executing Court. The Appellate Court has however held that defence of Plaintiff's mother Radhabai Patil being tenant in respect of suit property was raised and decided by the Trial Court while deciding the suit. What is sought to be done is to set up same defence through another person branding her as obstructionist in the execution proceedings. In that view of the matter the obstruction sought to be raised by the Appellant was clearly baseless. Appellant cannot be permitted to raise very same issue which has been considered and decided by the Trial Court and the First Appellate Court in the main suit proceedings.

5. I therefore do not find any patent error in the Order passed by the Trial Court and First Appellate Court. No substantial question of law is involved in the Appeal. The Appeal is accordingly rejected. Since the Appeal is rejected, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.