

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

WRIT PETITION NO.14904 OF 2023

Naigaon Co-operative Housing Society Ltd.	Petitioner
V/S	
Sunanda Ramakant Desai (deleted) & Ors.	Respondents

Mr. Rajesh Kachare a/w Ms. Sonal Dabholkar *for the Petitioner.*

Mr. P.K. Dhakephalkar, Senior Advocate i/b Mr. Ajit A. Kocharekar *for Respondent Nos.2, 5, 6 and 7.*

Mr. Shriram S. Redij *for Respondent Nos.9(A) to 9(C).*

CORAM: SANDEEP V. MARNE, J.

DATE : 03 MAY 2024.

P.C.:

1 Petitioner-Society has filed this Petition challenging the judgment and order dated 29 March 2023 passed by the Appellate Bench of the Small Causes Court at Mumbai dismissing the Execution Appeal No.229 of 2022 and confirming the order dated 5 August 2022 passed by the Court of Small Causes on Application at Exhibit-13 filed in Execution Application No.74 of 2020. With the result Petitioner's application filed under provisions of Order XXI, Rule 97 of the Code of Civil Procedure, 1908 (**the Code**) to obstruct execution of the decree has been rejected.

2 Heard Mr. Kachare, the learned counsel appearing for the Petitioner, Mr. Dhakephalkar, the learned Senior Advocate appearing for the Respondent Nos.2, 5, 6 and 7 and Mr. Redij for Respondent Nos.9(A) to 9(C).

3 It appears that Smt. Sunanda Ramakant Desai and others instituted RAE & R Suit No.46/83 of 1992 against Shri Kashinath R. Kolwankar for eviction claiming that the Plaintiffs therein are landlords and Shri Kashinath R. Kolwankar was their tenant. The Plaintiffs' suit for eviction of Shri Kashinath R. Kolwankar came to be dismissed by the Small Causes Court on 4 February 2008. In Appeal No.245 of 2008, the Appellate Bench of the Small Causes Court however reversed the order of the Trial Court and decreed the RAE & R Suit No.46/83 of 1992 and directed the Defendants to handover vacant and peaceful possession of the flat No.F2. It appears that the Civil Revision Application filed by Shri Kashinath R. Kolwankar is pending before this Court.

4 When the decree of the Appellate Bench was put for execution, Petitioner-Society filed an application under Order 21, Rule 97 of the Code to obstruct execution of the decree claiming that the Society is not just owner of the entire land and building but also has juridical possession of flat No.F2. It is Petitioner-Society's contention that the said flat was allotted by the Society to Shri Kashinath R. Kolwankar as its member and that in the event Shri Kolwankar is to be evicted, the Society must receive possession of the flat. It is Society's contention that Desais have absolutely no concern with the said flat and that they are not entitled to receive possession thereof. It appears that the Petitioner-Society has already filed multiple proceedings in various courts asserting its title, ownership and possessory rights in respect of various flats in the building including Flat No.F2. The said proceedings are pending. In those

proceedings, Petitioner-Society has sought a relief of recovery of possession of flat No.F2 from Desais.

5 It appears that the tenant Shri Kashinath R. Kolwankar also raised a similar defence which Mr. Kachare raises before me that Shri Kashinath R. Kolwankar was infact allotted the flat in his capacity as member of the Petitioner-Society. The said defence appears to have been repelled by the Small Causes Court and Appellate Bench and would be considered in pending Revision Application. In that view of the matter, Petitioner-Society cannot be permitted to raise that defence to obstruct execution of the decree. Admittedly, Petitioner-Society is not in actual possession of the suit flat. What it contends in that upon eviction of tenant Shri Kolwankar, the Petitioner-Society must get possession of the flat and for that purpose obstructionist application is filed by the Society. Thus what the Petitioner-Society seeks in an indirect manner is possession of flat No.F2 from Desais, for which it has already filed proceedings. In my view, Petitioner-Society cannot be permitted to obtain possession of the suit flat from the tenant in an indirect manner. If the Petitioner-Society is the owner in respect of the suit flat or is entitled to claim possession from Desais, it will have to await decision of the proceedings filed by it for seeking recovery of possession from Desais. In my view, no error is committed by the Small Causes Court or by its Appellate Bench in rejecting Petitioner-Society's application under Order XXI, Rule 97 of the Code. No patent error can be traced in the orders passed by the Small Causes Court and Appellate Bench. Writ Petition is being devoid of merits, is dismissed without

any order as to costs. All rights and contentions between the Petitioner-Society and Desais' about right, title and/or possession in respect of the Flat No.F2 are kept open to be decided in appropriate proceedings.

(SANDEEP V. MARNE, J.)

Digitally signed
by
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KATKAM
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