

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8150 OF 2024

Arun Nana More

.. Petitioner

Versus

Ramdular — Ramdhari — Prajapati

(since deceased) through Lrs.

Lalati Devi & Ors.

.. Respondents

-
- Mr. Yogendra Pendse a/w Ms. Priyanka Patkar for Petitioner
-

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 18, 2024

P. C.:

1. Heard Mr. Pendse, learned Advocate for Petitioner. None for the Respondents.

2. As directed by this Court on the previous occasion i.e. on 12.06.2024 when the matter was heard by me through video conferencing, Petitioner was directed to file affidavit of service. Mr. Pendse, at the outset, tenders affidavit of service dated 18.06.2024 which shows that Respondents have been duly served. This matter cannot be protracted any further in their absence.

3. After the matter was heard partially on 12.06.2024, it was Mr. Pendse was requested to come to the Court since it was difficult to understand and comprehend the three impugned orders as they were all handwritten orders. It is seen that there are three orders which are

impugned in the present Petition viz; i.e. order passed below Exh. 1 dated 01.09.2023, order passed below Exh. 85 dated 20.01.2024 and order passed below Exh. 88 dated 20.02.2024. Proceedings before the learned Executing Court are underway wherein interlocutory orders have been passed, which are the subject matter of challenge in the present Petition.

4. Petitioner is an obstructionist who has filed Obstructionist Notice below Exh. 25 on 26.03.2012 as appended at Exh. D, page No. to the Writ Petition. Admittedly the Obstructionist has led evidence rather substantive evidence but due to onset of Covid-19 pandemic he could not complete his witness action. His witness action remained pending and part-heard. On 22.08.2022 learned Executing Court passed “No further witness order” against the Obstructionist. That order was challenged by the Obstructionist in Application filed below Exh. 75. After hearing objections of the decree-holder which pertained to protraction and delay of proceedings, learned Trial Court allowed the Application on 03.01.2023 on payment of costs of Rs. 10,000/- to be paid by Obstructionist to the decree-holder. However, it is seen that the Obstructionist was not in a position to immediately comply with the said order within one week i.e. the time frame given by the Court and therefore he made an Application below Exh. 85 to the Executing Court seeking extension of time to comply. That Application is

rejected by the impugned order dated 20.01.2024 on the ground that the Obstructionist had in the past filed several such Applications seeking extension of time to comply with Court orders and they were rejected. Hence, his request to deposit the amount of Rs. 10,000/- stood rejected. It is seen that after sometime the Obstructionist was in a position to deposit the said amount of Rs. 10,000/- and sought permission from the Executing Court, but it was denied. However in one such Application the Obstructionist also sought reduction of the amount of costs due to financial constraints. That Application was determined by order dated 01.09.2023 and it also stood rejected. Incidentally on 01.09.2023, learned Executing Court passed an order which is appended at page No. 65 of the Petition holding that despite getting several opportunities the Obstructionist failed to adduce further evidence and hence “no further evidence” order was passed against him. That order is also the subject matter of challenge in the present Petition. Thereafter it is seen that the Obstructionist kept on repeatedly filing Applications before the learned Executing Court seeking to set aside the “no further evidence” order passed against him and also sought permission of the Executing Court for deposit of the amount of Rs. 10,000/-. Faced with such repeated Applications, learned Executing Court in one such Application filed by the Obstructionist permitted him to deposit the amount. However later

the Executing Court realized about the order allowing the Obstructionist to deposit the amount of Rs. 10,000/- having been passed inadvertently in view of the work pressure faced by the learned Judge due to dealing with similar cases. The Executing Court therefore recalled its order which directed the Obstructionist to deposit the amount of Rs. 10,000/- in the Court. Sensing this opportunity, the decree-holder simultaneously filed an Application in the execution proceedings below Exh. 88 for issuing possession warrant under O. XXI, R. 35 of the CPC. That Application was filed on 20.02.2024 and most interestingly the learned Executing Court on the very same day i.e. 20.02.2024 allowed that Application by holding that despite giving opportunity, the judgment-debtor has failed to file say to the said Application. The reason given by the learned Trial Court in the impugned order dated 20.02.2024 cannot be countenanced and is stated to be rejected. If the Application for issuance of possession warrant is dated 20.02.2024 and the order is passed on 20.02.2024 itself, then it is clear that no opportunity was given to the judgment-debtor to file his say on the said Application. The impugned order dated 20.02.2024 is passed on the very same date and possession warrant has been issued in respect of the suit flat which is occupied by the Obstructionist. Merely because the Execution proceedings are pending since long cannot be a reason to pass the

possession warrant since record and pleadings show that the Obstructionist has contested the proceedings from 2012 and has also led adequate evidence. Not allowing the opportunity to the Obstructionist to complete his evidence is evident from the series of orders which have been passed by the Executing Court, despite him making a plea to deposit the costs. Rejecting the Application of the Obstructionist is therefore extremely harsh when his witness action has already been partly recorded. Such a course of action cannot be allowed. In the interest of justice, Obstructionist is required to be given the opportunity to complete his witness action / evidence.

5. In view of the above observations and findings, in so far as the impugned order dated 20.02.2024 is concerned, the same is quashed and set aside. Possession warrant issued by the learned Executing Court is uncalled for at this stage and is set aside. The order dated 20.01.2024 also stands quashed and set aside with a direction that the decree-holder shall be entitled to withdraw the amount of Rs. 10,000/- which is already deposited by the Obstructionist with the Executing Court along with any accrued interest thereon as per the order dated 03.01.2023 passed by the Executing Court. The order dated 03.01.2023 stands sustained.

6. In view of the above, the order of “No further evidence” dated 01.09.2023 which has been passed by the learned Executing Court and

appended at page No. 65 of the Petition also stands quashed and set aside resultantly permitting the Obstructionist to complete his witness action / evidence. The Obstructionist shall appear before the learned Executing Court along with a server copy of this order on Wednesday 26th June, 2024 at 10:30 a.m. and the learned Executing Court shall issue the appropriate process to the decree-holder on that date and fix the next date to complete the witness action of the Obstructionist as per its convenience and discretion.

7. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2024.06.24
19:30:40
+0530