

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

WRIT PETITION NO.12125 OF 2024

Vakar Abbas Naik

....Petitioner

V/S

The Board Trustees of the Port of Bombay & Ors.

....Respondents

Mr. Rajesh Kanojia i/b Res Juris *for the Petitioner.*

CORAM: SANDEEP V. MARNE, J.

DATE : 29 AUGUST 2024.

P.C.:

1 This Petition is filed challenging the orders dated 15 April 2024 and 11 July 2024 passed by the learned Judge of the Small Causes Court on applications at Exhibits 41 and 42 respectively filed in Obstructionists Notice No.641 of 2010. By those applications the Petitioner sought permission to file Additional-Affidavit-of-Evidence alongwith additional documents.

2 It appears that the suit was instituted by the Plaintiff-Port Trust in the year 1980 and that the same has been decreed in the year 1997. The decree dated 12 November 1997 is yet to be executed and possibly the Petitioner has presented obstruction to the execution of the decree on the ground that he is in possession of the suit premises. This prompted the Plaintiff-decree holder to take out Obstructionist Notice No.641 of 2010. The travesty of justice is that

the said Obstructionist Notice is pending for the last 14 long years with the reason Petitioner continues to enjoy possession of the suit premises.

3 It appears that the Petitioner filed his Affidavit-of-evidence on 16 November 2011. Taking aid of unduly long pendency of the obstructionists proceedings for the last 14 long years, Petitioner thought of a novel idea of initially filing a vague application at Exhibit 41 stating that he wanted to file Additional-Affidavit-of-Evidence alongwith 'certain documents' without disclosing the exact nature of documents that he wanted to produce. The application was rightly rejected by the learned Judge by order dated 15 April 2024. Petitioner thereafter filed fresh application at Exhibit 42 this time seeking to give details of the evidence and documents that he intends to produce alongwith the Additional-Affidavit-of-Evidence. The application at Exhibit 42 has also been rejected by the learned Judge by order dated 11 July 2024. The rejection order is premised on the principle of *res judicata*.

4 The learned counsel for the Petitioner submits that the principle of *res judicata* could not have been applied since the reason for rejection of earlier application at Exhibit 41 was failure to disclose the nature of documents which is the reason why the Petitioner disclosed the nature of documents in the fresh application at Exhibit 42. While the learned counsel does not appear to be entirely wrong in contending so it must also borne in mind that the limited remit of enquiry before the Executing Court in the Obstructionist Notice is only to examine whether the obstructionist can establish any independent

right to remain in possession of the suit premises despite passing of decree for eviction. It appears that in the initial Affidavit-of-Evidence, the Petitioner has contended that his father was earlier carrying out business in partnership alongwith other partners in the suit premises and that all other partners retired from partnership on 20 January 1988 thereafter his father continue to be the sole occupant and possessor of the suit premises. Thus the Petitioner will have to establish before the Small Cause Court his independent right to remain in possession of the suit premises notwithstanding passing of decree against the Defendant in the suit. The Obstructionist Notice is pending since the year 2010 and Petitioner cannot be permitted to delay its decision by seeking to file an Additional-Affidavit in the year 2024. I do not therefore find any reason to interfere in the orders passed by the learned Judge of the Small Causes Court. Writ Petition is accordingly **rejected**.

(SANDEEP V. MARNE, J.)