

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

WRIT PETITION NO.16918 OF 2024

Johar Ali Ahmed Khan

...Petitioner

V/S

Dena Bank & Ors.

...Respondents

Dr. Abhinav Chandrachud a/w Mr. Vijay R. Garad *for the Petitioners.*

Ms. Mansi Pawar a/w Ms. Akshaya Puthran i/b M/s. S.K. Singhi & Partners LLP *for Respondent No.1-Bank.*

CORAM: SANDEEP V. MARNE, J.

DATE : 19 NOVEMBER 2024.

P.C.:

1. The Petition challenges orders dated 21 October 2024 passed by the Small Causes Court on Application at Exhibit-36 filed by the decree-holder for re-issuance of warrant of possession for recovery of possession of the suit premises as well as order dated 25 October 2024 passed on Application at Exhibit-39 filed by the Petitioner seeking stay to the execution of warrant of possession.

2. I have heard Dr. Chandrachud, the learned counsel appearing for the Petitioner and Ms. Pawar, the learned counsel appearing for Respondent No.1-Bank.

3. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the possession warrant earlier issued as per order dated 21 September 2024 could not be executed on account of Petitioner's presence in the suit premises. This is a reason why decree holder took out application at Exhibit-36 for re-issuance of warrant of possession for recovery of possession of the suit premises. It appears that despite knowledge of the fact that the decree was sought to be executed, Petitioner did not take out any proceedings for proving his independent rights in respect of the suit premises. This led to filing of Application at Exhibit-36 by the decree-holder for re-issuance of warrant of possession. Dr. Chandrachud would rely upon judgment of the Apex Court in ***Brahmdev Chaudhary vs. Rishikesh Prasad Jaiswal and Another***, (1997) 3 SCC 694 in support of his contention that the decree-holder cannot bypass an obstruction presented to the execution of the decree and insist on re-issuance of warrant of possession. While Dr. Chandrachud may not be entirely wrong in contending so, at the same time, the judgment of the Apex Court in ***Brahmdev Chaudhary*** (supra) also recognizes right of the stranger to the decree claiming independent right, title and interest in the decretal property to offer his resistance under provisions of Order 21, Rule 99 of the Code of Civil Procedure, 1908 (**the Code**) before getting actually dispossessed. Thus Petitioner ought to have filed necessary application offering resistance to execution of decree under provisions of Order 21, Rule 99 of the Code. Instead of doing so Petitioner filed

application at Exhibit-39 merely seeking stay to the execution of possession warrant. When Application at Exhibit-39 was taken up for decision, Petitioner could not produce any document to prove his possession in respect of the suit premises prior to passing of the decree dated 28 June 2010. It appears that by decree dated 28 June 2010, Defendant No.2 was restrained from creating any third party rights in respect of the suit premises. On account of inability on the part of the Petitioner to produce any document to prove his independent right and possession in respect of the suit premises prior to the decree dated 28 June 2010, the learned Executing Court has proceeded to dismiss Application at Exhibit-39. Though Dr. Chandrachud has attempted to suggest that Petitioner did not have sufficient time to gather and produce the relevant documents to prove his independent right in respect of the suit premises prior to 28 June 2010, it is seen that even in the present Petition, no document is produced to show independent possession of Petitioner prior to 28 June 2010. I am therefore not inclined to entertain the present Petition. Writ Petition is accordingly **dismissed**.

4. In the event of being disposed, Petitioner shall be at liberty to file an Application under Order 21, Rule 99 of the Code seeking restoration of possession of the suit premises by establishing his independent right in respect thereof. Such Application, if filed, shall be decided on its own merits without

being influenced by any of the observations made in the order dated 25 October 2024 or in the present order.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by SUDARSHAN
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2024.11.22
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