

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18842 OF 2024

Ashish Champalal Sundesha

....*Petitioner*

: *Versus* :

Kailashpati A. Gupta & Ors.

....*Respondents*

Mr. Satyavan N. Vaishnav a/w. Ms. Nupur J. Mukherjee, Mr. Armaan Grewal i/by. M/s. N.N. Vaishnawa & Co. , for the Petitioner.

Mr. Shailendra S. Kanetkar, for the Respondent.

CORAM : **SANDEEP V. MARNE, J.**

Dated : **16 DECEMBER 2024.**

P.C. :

1) The petition challenges order dated 23 October 2024 passed by the Executing Court directing appointment of Gold Valuer for valuation of gold and silver articles as per the inventory dated 10 October 2024 and 2 July 2024 and after obtaining the valuation report, sell the articles in public auction.

2) The Petitioner claims to be one of the legal heirs of partners of the Defendant-Firm. He claims that he was in possession of the suit premises and that possession of the premises has been

forcibly obtained from him towards execution of the *ex-parte* decree. The Petitioner has filed application for setting aside the *ex-parte* decree under the provisions of Order 9 Rule 13 of the Civil Procedure Code is pending.

3) In my view, if indeed the possession of the suit premises was obtained from the Petitioner, he ought to have presented obstruction to the execution of the decree since he was not a party defendant to the suit. Furthermore, before passing the impugned order dated 23 October 2024, the Executing Court had passed order dated 5 September 2024 directing removal of all goods by the Defendants in the suit. If at all the Petitioner is the legal heir of any of the Defendants and was really in possession of the suit premises, he ought to have removed the goods kept in the suit premises.

4) In my view, the possession of the suit premises is already handed over to the Plaintiff by executing the decree on 2 July 2024. Presence of the goods that are slated for auction in the suit premises puts a fetter on the Plaintiff-decreeholder from enjoying the fruits of the decree. If Mr. Vaishnav's contention about preservation of goods till decision of the application for *ex-parte* decree is to be entertained, the same would mean that the Plaintiff would not be able to enjoy the possession of the suit premises obtained towards execution of the decree and Plaintiff will have the responsibility of preserving the articles in the suit premises. Mr. Vaishnav would alternatively plead that he would suggest a venue where the articles could be preserved at the risk and expenses of the Petitioner. However, as of now, there is nothing on record to indicate that the goods lying in the

suit premises do really belong to the Petitioner. As observed above, if Plaintiff was really in possession of the suit premises when the decree was executed, he could have not only obstructed the decree but would have immediately removed all the valuable articles from the suit premises. Infact, there was a direction by the Executing Court for removal of all articles. It would therefore be too dangerous at this stage to handover custody of the articles to the Petitioner. On the other hand, if the auction sale is conducted, the form of the articles would change and the monies secured through auction sale would then be deposited in the Executing Court. The rightful claimants to these monies would be in a position to agitate their grievances about the monies so deposited. Since the continuation of custody of articles in the suit premises prevents the Plaintiff-decreeholder from enjoying possession of the premises, in my view, the order dated 23 October 2024 directing auction of the articles does not warrant any interference. Keeping all the claims of the Petitioner, as well as other parties to the sale proceeds of the articles sold in auction, open, the Writ Petition is **disposed of**.

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[SANDEEP V. MARNE, J.]