



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAW) NO. 1717 OF 2024

IN

WRIT PETITION NO. 7414 OF 2019

(Dilip Shankarrao Junghare V/s Pramod Kedarnath Gandhi & Ors.)

Office Notes, Office Memoranda of Coram,
Appearances, court's orders or directions and
Registrar's orders

Court's or Judge's orders

Mr. S. S. Sitani, Advocate for Applicant/Petitioner.
Mr. N. B. Rathod, Advocate for Respondent Nos.2(b)
to 2(e).

CORAM : ANIL L. PANSARE, J.

DATE : JULY 10, 2024.

. By the present Application, Petitioner is seeking to extend/continue the Judgment dated 30/4/2024 protecting alleged possession of the Petitioner for a further period of six weeks.

2. On 8/7/2024 following order was passed :

“ The prayer in the present Application is to extend/continue the Judgment dated 30/4/2024 protecting possession of the Petitioner for further period of six weeks.

2. The learned Counsel for legal heirs of the Respondent No.2 submits that the Petitioner is not in possession.

3. As against, the learned Counsel for Petitioner submits that the legal representatives of the Respondent No.2 have filed suit for possession against the Petitioner, meaning thereby that the Petitioner's possession has been admitted.

4. The learned Counsels shall place on record affidavit of respective parties in support of the contentions.

5. Stand over to 9th July, 2024.”

3. In compliance to the aforesaid order, Petitioner has filed the affidavit, however, it does not disclose that the legal representatives of Respondent No.2 have filed suit for possession against the Petitioner.

4. When enquired, learned Counsel for Petitioner, instead of answering the specific query as to whether the legal representatives of Respondent No.2 had filed a suit for possession against the Petitioner, has made all other submissions except to answer the query.

5. In any case, once the Counsel has made a statement across the bar and sought time to file affidavit in support of such statement, one would expect in the affidavit the details of the suit allegedly filed by the legal representatives of the Respondent No.2 against the Petitioner, which according to the learned Counsel for Petitioner, is self-sufficient to prove that the Petitioner is in possession of the disputed property.

6. At this stage, the learned Counsel for Petitioner submits that the Writ Petition itself arose out of the suit so filed before the trial court. He was reminded of the fact that the Petitioner ought to have stated details of the suit, as claimed, in his affidavit. The Counsel, however, insisted to take a look at a document, which according to him, is self-explanatory as regards

filing of the suit by the legal representatives of Respondent No.2 against the Petitioner.

7. The learned Counsel has invited my attention to Annexure-13 (Page 200) of the Writ Petition, which is the application seeking execution of the decree. The cause title of the suit has been reproduced in Column No.2 of the application, which indicates that the Respondent No.2 had filed a suit against the Respondent No.1 and the Petitioner. The Column No.9 which refers to the request of Decree Holder as to against whom decree is to be executed, the name of Respondent No.1, and not of the Petitioner, is mentioned. The request of the Decree Holder, thus, clearly spells out as to who is in possession of the disputed premises. In the circumstances, if Annexure-13 is to be relied upon, it shows that the Respondent No.1, and not the Petitioner, is in possession of the disputed premises. This document is, therefore, of no assistance to infer that the Petitioner is in possession of the disputed premises.

8. The learned Counsel for Petitioner then went on to submit the details of the plaint, copy of which is not annexed with the present Application or the affidavit filed today. According to him, the Respondent No.1 was his tenant and his occupation is to be treated for and on behalf of the Petitioner. This proposition is unacceptable. If the Respondent No.1 is in possession, it is he who may seek protection and not the Petitioner.

9. Further, the submissions without producing copy of plaint cannot be accepted as gospel truth, particularly when the

learned Counsel for Respondent No.2 has come up with a categorical case that the Petitioner is not in possession. The affidavit filed by the Respondent No.2 indicates that the Respondent No.1 is in possession, which theory is also supported by Annexure-13.

10. Further, in the application filed by the Petitioner seeking extension of time, he states that Judgment dated 30/4/2024 passed in Writ Petition was uploaded on the website on 15/5/2024 and summer vacations of the Hon'ble Supreme Court were to commence from 20/5/2024 and were to last till 7/7/2024. The Petitioner then states that the period of eight weeks, as granted by this Court, will come to an end on 30/6/2024, during which period the Hon'ble Supreme Court of India is on summer vacations, and therefore, it will be practically impossible for the Petitioner to approach the Supreme Court and seek interim protection.

11. The submissions are unacceptable, in as much as, functioning of the Hon'ble Supreme Court is known to one and all. The Benches are always available to deal with urgent matters in the vacations.

12. That apart, the Respondent No.2(d) in his affidavit has revealed that the Petitioner has preferred Special Leave Petition (Diary) No. 28533/2024 challenging the Judgment dated 30/4/2024 passed by this Court. The learned Counsel for Legal Representatives of the Respondent No.2 accordingly submits, and rightly so, that since the Supreme Court is now seized off the

matter, the continuation of interim order or to grant interim relief falls within the exclusive jurisdiction of the Supreme Court.

13. Considering overall conduct of the Petitioner and the facts noted above, I do not find any reason to entertain the Application. The same is accordingly dismissed with costs of Rs.10,000/- which the Petitioner shall pay to the legal representatives of the Respondent No.2 within four weeks from today.

(ANIL L. PANSARE, J.)

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