

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14693 OF 2024

Kedarnath Mahadev Tiwari ...Petitioner

Versus

Mehadi Kasan Munshi Raja And Anr ...Respondents

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Mr. Digvijay R. Singh, i/by Adv. R. B. Singh and Associates, for
the Petitioner.

Mr. Pradeep Thorat, i/by Ms. Aditi Naikare, for Respondent
No.2.

CORAM: N. J. JAMADAR, J.

DATED: 23rd JUNE, 2025

Oral Order:-

1. Heard the learned Counsel for the parties.
2. Leave to amend the application so as to make necessary averments and seek further reliefs.

Leave granted.

3. The challenge in this application is to an order dated 28th June, 2024 passed by the learned Judge, Court of Small Causes on an application (Exhibit-44) filed by the petitioner – plaintiff – decree-holder for withdrawal of the amount deposited by the respondent – Judgment-Debtor No.2 pursuant to the orders dated 19th September, 2022 and 22nd November, 2022.

4. The petitioner had instituted RAE & R Suit No.268/701/1995. The said suit was decreed. In Execution Application No.68/2017, the decree came to be executed on 15th November, 2021. The Bailiff submitted an inventory of the articles found at the suit property at the time of the execution of the decree. To have the safe keeping of the said articles the petitioner/decreed-holder claimed to have appointed the security guards, provided by M/s. Day Night Services and incurred expenses to the tune of Rs.34,000/- per month.

5. The petitioner thus filed an application (Exhibit-26) in the execution proceeding, seeking direction to the respondent - Judgment-Debtors to take the custody of the articles in respect of which the inventory was prepared from the suit premises under the supervision of the Bailiff of the Court. In the alternative, the petitioner prayed for a direction to auction the said articles and reimburse the expenses incurred by the petitioner in the safe keeping of the said articles.

6. By an order dated 19th September, 2022 the Executing Court directed Judgment-Debtor No.2 Animulla A. Chaudhary to take possession of the articles as per the inventory within 20 days thereof. In default, the said articles were directed to be sold. Judgment-Debtor No.2 was also directed to pay security

charges at the rate of Rs.34,000/- pm. from December, 2021 till 21st September, 2022 within one month from the date of the said order.

7. The respondent – Judgment-Debtor No.2 filed application (Exhibit-41) seeking permission to remove the belongings and the said articles from the suit property. While allowing the said application, the Executing Court directed Judgment-Debtor No.2 to deposit the amount of Rs.34,000/- per month from December, 2021 till September, 2022 in the Court within a period of two weeks thereof. Pursuant to the said order, the Judgment-Debtor deposited the said amount and took the custody of the articles on 19th December, 2022. Thereupon, the petitioner preferred application (Exhibit-41) seeking permission to withdraw the amount deposited by the Judgment-Debtor.

8. The application was resisted by the Judgment-Debtor.

9. By the impugned order the learned Judge, Court of Small Causes, was persuaded to reject the application observing *inter alia* that the question as to whether the decree-holder had actually incurred an amount of Rs.34,000/- pm. towards security charges for the safe keeping of the articles, was an independent issue which required final adjudication in separate proceedings.

10. Being aggrieved, the petitioner has invoked the writ jurisdiction.

11. Mr. Singh, the learned Counsel for the petitioner, submitted that when the Court had passed the order dated 19th September, 2022 on the application (Exhibit-26), the liability of the Judgment Debtor to pay the amount to secure the articles stood determined. Thereafter once the amount was deposited, the Judgment-Debtor No.2 could not have objected for the withdrawal of the amount. The Executing Court was thus in error in observing that the petitioner was required to take out a separate proceeding for the determination of the said issue.

12. Mr. Thorat, the learned Counsel for the respondent No.2, supported the impugned order. It was submitted that the amount of Rs.34,000/- per month was deposited by the Judgment-Debtor in terms of the order of the Court. Whether the petitioner had, in fact, incurred the expenses of Rs.34,000/- per month is a question of fact, and, has yet not been adjudicated. Therefore, the Executing Court was justified in observing that the said issue warrants adjudication in a separate proceeding.

13. It is true the question as to whether the petitioner had, in fact, incurred expenses at the rate of Rs.34,000/- pm. to secure

the articles warrants adjudication. However, since the question arose during the course of the execution proceedings, the Executing Court has the jurisdictional competence to decide the said question as it is covered by the expression, “execution, discharge or satisfaction of the decree”. The Executing Court was, therefore, not justified in non-suiting the petitioner on the count that the petitioner was required to institute a separate proceeding. In the very same proceeding, the Executing Court could have decided the said issue.

14. The Court finds that the petitioner had preferred the application for withdrawal of the amount. While remitting the application (Exhibit-41) for afresh determination, the Court considers it appropriate to provide an opportunity to the petitioner to file an application to amend the said application and make appropriate averments and seek appropriate reliefs.

15. If the amendment is permitted to be carried out, the respondent – Judgment-Debtor No.2 would be at liberty to file an additional affidavit-in-reply.

16. The Executing Court is requested to decide the issue of entitlement of the petitioner and pass appropriate order after providing an effective opportunity of hearing to the parties.

17. It is clarified that a summary inquiry be conducted and the parties shall not be permitted to lead evidence.

18. Petition stands disposed.

[N. J. JAMADAR, J.]