

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4124 OF 2025

Shivnath Omprakash Gupta

...Petitioner

Versus

Sadiqueali Khan Bashir Ahmed Khan & Ors.

...Respondents

Mr. Kunal Bhanage a/w Akshay Pawar, Priyanka Acharrya & Bijal Chowlera i/b Vasim Siddiqui, for the Petitioner.

Mr. J. P. Mishra a/w J. S. Shukla, for Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.
DATED: 07 APRIL 2025

P.C.:

1. Heard Mr. Kunal Bhanage, learned Counsel appearing for the Petitioner and Mr. J. P. Mishra, learned Counsel appearing for the Respondent No.1.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 27th February 2025 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Revision Application No.38 of 2025 by which said Revision is dismissed with cost of Rs.10,000/-. The challenge in said Revision Application is to the Order 4th January 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit - 56 in Obstructionist Notice No.318 of 2018 in Execution

Application No.78 of 2017 in RAE & R Suit No.896/1422 of 2003. The said Application bearing Exhibit - 56 has been filed by the present Petitioner i.e. Obstructionist No.1, praying for setting aside Order of closing evidence dated 18th November 2024 and for permission to lead evidence. The said Order dated 4th January 2025 passed by the learned Trial Court as noted herein above is confirmed by the Revisional Court by dismissing the Revision by imposing cost of Rs.10,000/-.

3. Before considering the merits, it is necessary to set out Paragraph Nos.5 and 6 of the said Order dated 4th January 2025 passed by the learned Trial Court, which read as under :-

***“5. This obstructionist notice is filed in the year 2018. Notices were issued. But this obstructionist failed to appear in the matter initially. Thus, ex-parte order was passed against him on 11.02.2019. Then the matter was proceeded further. After filing reply by other obstructionists’ issues were framed on 04.06.2019 and the matter was kept for hearing. Evidence of obstructionist nos. 2 and 3 was closed vide order below Exh. 1 on 09.09.2019 and 26.09.2019 respectively. The matter was finally heard for the plaintiff on 19.10.2019. ‘No Argument’ order was passed against other obstructionists on Exh. 1. On that date, this obstructionist no. 1 filed Vakaltnama and on 07.11.2019 filed application to set aside ex-parte order. It was allowed on 26.11.2019. Again the matter was kept for evidence of obstructionist no. 1. He sought the adjournments but no evidence was filed and on 21.02.2020 the evidence of obstructionist no. 1 was closed and the matter was posted for arguments. Due to Covid -19 pandemic the matter was not conducted. On 05.02.2021 heard learned advocate for plaintiff finally. Again the arguments of obstructionist no. 1 was closed and on 16.03.2021 the ld. Predecessor passed the judgment and closed the proceeding.*”**

6. *Against the said order Misc. Appeal No. 82 of 2021 was preferred and the said obstructionist notice is remanded back. Accordingly, on 20.10.2021 it was taken on Board and kept for evidence of obstructionist no. 1. Even then no evidence was filed by him. Instead, application for amendment Exh. 34 was filed. It was decided and allowed on 03.01.2022. This order was challenged by the plaintiff in Revision and this matter was stayed upto 25.08.2022. The said Revision application is dismissed on 01.08.2022 and the stay was vacated accordingly. Then the obstructionist again took time to comply with the order passed below Exh. 34 and it was compiled on 14.09.2023. Again the matter was kept for evidence of the obstructionist no. 1. From 19.10.2023 he sought time till 05.01.2024. But instead of filing evidence again on 18.01.2024 made amendment application, which is rejected on 06.03.2024. Since then the matter is for evidence of the obstructionist no. 1. He further sought adjournments but he failed to file the evidence. Ultimately on 18.11.2024 the evidence of the obstructionist no. 1 was closed and the matter was posted for arguments. Then on next date this application is given.”*

(Emphasis added)

4. The factual position set out in Paragraph Nos.5 and 6 by the learned Trial Court clearly shows that the Petitioner is trying to delay the matter. Both the learned Courts have concurrently held that the Petitioner i.e. Obstructionist No.1 is trying to prolong the matter.

5. It is required to note the Order dated 6th October 2021 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Misc. Appeal No.82 of 2021, to which reference is made by the learned Trial Court in above quoted Paragraph No.6. The operative part of the said Order reads as follows:

“ORDER

1. *Misc. Appeal No.82 of 2021 is allowed subject to payment of costs of Rs.5,000/-.*
2. *The obstructionist No. 1/ appellant to pay costs of Rs. 5,000/- and costs of Rs. 50,000/- which was imposed by Ld. Trial Court as per order passed below Exh. 27 to the respondents within one Month from the date of this order.*
3. ***On payment of aforesaid costs, Order passed below Obstructionist Notice No. 318 of 2018 is set aside with direction that obstructionist No. 1 should be given chance to proceed with the matter and put up his case.***
4. *Ld. Trial Court is hereby directed to expedite hearing of obstructionist Notice and both parties should co-operate Ld. Trial Court for early disposal of Obstructionist notice.*
5. ***Both parties are directed to appear before the Trial Court on 20/10/2021 at 11.00 am.”***

(Emphasis added)

6. Perusal of the record shows that even after the Order dated 6th October 2021 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Misc. Appeal No.82 of 2021, the Petitioner failed to file the Evidence Affidavit and instead of that filed Application for amendment bearing Exhibit - 34.
7. The perusal of the record shows that both the Courts have rightly held that the Petitioner who is the Obstructionist is delaying the matter. The Suit has been filed in the year 2003 which is decreed in the year 2010 and the said decree has been confirmed upto the High Court in the year 2018 and thereafter the Petitioner who is the Obstructionist is delaying the matter.

8. Accordingly, no interference is warranted under the jurisdiction of this Court under Article 227 of the Constitution of India.
9. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]