

Vaibhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.52 OF 2025

Joha Ali Ahmed Khan

...Applicant

Versus

Bank Of Baroda & Ors.

...Respondents

Dr. Abhinav Chandrachud (Through V.C.) a/w Vijay R. Garad, for the Applicant.

CORAM: MADHAV J. JAMDAR, J.
DATED: 3 FEBRUARY 2025

P.C.:

- 1.** Heard Dr. Chandrachud, learned Counsel appearing for the Applicant.
- 2.** By the present Civil Revision Application the challenge is to the legality and validity of the impugned Judgment and Order dated 15th January 2025 passed by the learned Judge, Small Causes Court, Mumbai in Execution Appeal No.1 of 2025. By the impugned Order, said Execution Appeal is rejected. In said Execution Appeal challenge was to the Order dated 25th October 2024 passed in the Application bearing Exhibit-39 in Execution Application No.247 of 2019.
- 3.** The position on record shows that an Application at Exhibit-36 has been filed by the decree-holder for re-issuance of warrant of possession for recovery of possession of the suit premises. The present Applicant has filed an Application bearing Exhibit-39 merely seeking

stay to the execution of warrant of possession. The learned Small Causes Court has rejected said Exhibit-39 Application by Order dated 25th October 2024 and by Order dated 21st October 2024 allowed the said Exhibit-36 Application and re-issued the possession warrant.

4. A learned Single Judge by Order dated 19th November 2024 passed in Writ Petition No.16918 of 2024 dismissed the Writ Petition challenging said Order passed below Exhibit-36 and Exhibit-39 and further issued following directions as contained in Paragraph No.4:-

“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 25th October 2024 or in the present order.”

5. It appears that, without filing an Application under Order XXI Rule 99 of the *Code of Civil Procedure, 1908* (“CPC”) seeking restoration of possession by establishing his independent right, title and interest, the Applicant filed the said Execution Appeal challenging the Order passed below Exhibit-39. The learned Appellate Court has observed that the only remedy available to the Applicant as directed by the High Court is to file an Application under Order XXI Rule 99 of (“CPC”) seeking the restoration of possession. In fact, when the Applicant has challenged the same Order passed below Exhibit-39 before this Court and a learned Single Judge has dismissed the Petition,

there was no occasion to challenge the same Order by filing Execution Appeal No.1 of 2025. Filing of said Execution Appeal No.1 of 2025 is in fact abuse of the process of law.

6. Accordingly, no interference in the impugned Order is warranted. The Civil Revision Application is dismissed with cost of Rs.10,000/-.

[MADHAV J. JAMDAR, J.]