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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9242 OF 2018
WITH
INTERIM APPLICATION NO. 15541 OF 2024

Mr. Shyambahadur Sukar Harijan … Petitioner/Applicant

vs.

The Board of Trustees of the Port of Bombay and Anr … Respondents

Mr. Avinash Gokhale a/w. Mr. Shoeb Ansari for the Petitioner

Mr. Dhruva Gandhi a/w. Ms. Nina Motiwalla i/b. Motiwalla and Co. for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 7th OCTOBER 2026

VARSHA VIJAY RAJGURU
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Date: 2026.10.19 18:57:19 +0530

ORDER:

1. The obstructionist filed this petition to challenge the order dated 2nd May 2018 passed by the appellate bench of the Small Causes Court rejecting the petitioner's application for condonation of delay. The petitioner filed the application for condonation of delay of 207 days in filing the appeal to challenge the order dated 5th May 2017, dismissing the

petitioner's application under Order IX Rule 13 of the Civil Procedure Code ('**CPC**'). The application under Order IX Rule 13 CPC was filed to set aside the order allowing the obstructionist notice and directing the handing over of possession of the suit premises to the respondent, that is, the decree holder.

2. The execution application is filed for execution of the eviction decree dated 23rd March 1992 passed in Suit No. 380/436 of 1988 against respondent no. 2, who was the original defendant and lessee of the plaintiff, i.e. respondent no.1. In execution of the said decree, the obstructionist notice was issued to 18 parties, and the present petitioner was numbered as obstructionist no. 18. The said application for removal of obstruction was allowed on 10th April 2010. The present petitioner filed an application for setting aside the said order, which was ex parte. The Court dismissed the application on 5th May 2017. Hence, the petitioner preferred an appeal along with an application for condonation of delay, which the impugned order dismissed on 2nd May 2018.

3. Learned counsel for the petitioner submits that the

petitioner is residing in zopda no. 17, which is situated on plot no. 112 in respect of which the decree under execution is passed. He relies upon the bank statement to show that the petitioner has been residing in Zopda No. 17 since before June 1994. He further submits that the suit property is declared as a slum; hence, without seeking permission under Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 **('Slum Act'),** the decree cannot be executed. He also relies upon the newspaper article annexed at Exhibit-J to the petition. He submits that respondent no. 1 declared that a massive redevelopment project has been undertaken and the occupants would be rehabilitated.

4. Learned counsel for the petitioner also relies upon the interim application filed for amendment. He submits that, in the Rajya Sabha, in response to questions to the Ministry of Shipping, it was stated that slum dwellers would be rehabilitated under the proposed guidelines for the land in use and management of the township area of major ports. He further relies on the circular dated 22nd July 2014 to support his submissions that the petitioner's structure would be protected

under the government policy, as it existed prior to 1st January 2000.

5. He therefore submits that the petitioner's structure, being in existence prior to 1994, is protected under the government policy and thus, the eviction decree cannot be executed so far as the petitioner's structure is concerned. He further submits that the petitioner is an illiterate person working as a driver and thus was unaware of the orders passed. Hence, there is a delay in filing the appeal. The reasons for delay are explained in the application which is annexed at Exhibit-A to the petition. He therefore submits that the appellate bench of the Small Causes Court erred in not appreciating that the petitioner's structure is protected and, thus, his application to set aside the obstructionist notice needs to be heard on merits.

6. Learned counsel for the petitioner also raised an objection that the suit premises would be covered under the Public Premises(Eviction of Unauthorised Occupants) Act, 1971 (**'Public Premises Act'**); hence, the Small Causes Court has no jurisdiction to pass an eviction decree or execute the same. He therefore submits that this Court should interfere with

the impugned order.

7. Learned counsel for the petitioner relied upon the order dated 22nd July 2026, passed in Review Petition(St) No. 11585 of 2024. He submits that in a similarly situated petition filed by another obstructionist, this court has granted interim protection. Hence, on similar grounds, the petitioner's possession also needs protection.

8. Learned counsel for respondent no. 1, i.e., the decree holder, submits that the Division Bench of this Court decided the reference in the case of ***Hussainali Sharif Punjwani Vs. The Board of Trustees of Port of Bombay***[1]. While answering the reference, the Division Bench of this Court explained that the word 'entertain' used in Section 15 of the Public Premises Act means that the Small Causes Court has jurisdiction to hear all such suits for eviction filed before 21st September 1989. He therefore submits that the present suit, filed in 1988, is well within the jurisdiction of the Small Causes Court.

9. So far as reliance on government policies is concerned, learned counsel for respondent no. 1 submits that they pertain

1 2017 SCC Online Bom 2637

to government land and do not apply to the property owned by respondent no. 1. He points out that the description of the property in respect of which the eviction decree is passed is in respect of plot bearing no. 112 in block no. 8. He submits that the petitioner was unable to show that his structure stands on plot no. 112 for seeking any kind of protection as claimed by the petitioner.

10. Learned counsel for respondent no. 1 relies on the findings recorded in the order dated 5th May 2017 while deciding the petitioner's application under Order IX Rule 13 of the CPC. He submits that after verifying the record, the Small Causes Court held that the possession of plot no. 112, except the area of 2.6 feet by 128 feet, the rest of the area is already handed over to respondent no.1. He further submitted that the dispute in respect of plot no. 112 was also considered with regard to the major portion of the obstructionist's huts on the adjoining plot no. 113. He therefore submits that the findings of fact are recorded that the huts of the obstructionists are situated on plot no. 113 and not on plot no. 112.

11. Learned counsel for respondent no. 1 submits that there

are no supporting pleadings for the objection raised regarding Section 22 of the Slum Act. He submits that in the absence of any notification under the Slum Act in respect of plot no. 112, the permission under Section 22 would not arise. He therefore submits that in view of the findings of fact recorded by the Small Causes Court that the applicant's hut is situated on plot no. 113, the petitioner is not entitled to obstruct the execution of the eviction decree in respect of plot no. 112. He therefore submits that no interference is warranted in the impugned order.

12. I have perused the papers of the petition. There is no dispute in respect of the description of the suit property in the eviction decree. The applicant's contention regarding his right in respect of zopada no. 17, does not appear to be connected to plot no. 112. None of the documents relied upon by the learned counsel for the petitioner reveals that the petitioner's structure is on plot no. 112. Nothing on record indicates that the suit property has been declared a slum. Hence, no supporting pleading or evidence shows that the notification under the Slum Act has been issued in respect of the suit property. The

objection raised by the learned counsel for the petitioner, relying on Section 22 of the Slum Act, is not relevant to the present petition.

13. The policy decision and the newspaper article regarding the rehabilitation project undertaken by respondent no.1 do not assist the petitioner in obstructing the eviction decree. The government's policy decision and the rehabilitation project, if any, are no ground to obstruct the eviction decree. The executing court has therefore rightly refused to entertain the said contention, as the same are beyond the scope, power, and jurisdiction of the executing court, which is concerned with the execution of the eviction decree in respect of plot no. 112. In view of the well-settled legal principles laid down by this Court in *Hussainali Sharif Punjwani*, it is unnecessary to discuss the objection to the jurisdiction of the Small Causes Court.

14. On perusal of the application for condonation of delay filed by the petitioner, no satisfactory explanation is seen for not taking immediate steps after receiving a certified copy on 23rd June 2017. The application for condonation of delay is also rejected on the ground that no sufficient cause is shown for the

delay in filing the appeal to challenge the order dismissing the petitioner's application under Order IX Rule 13 of the CPC. The obstructionist notice was made absolute by the execution court on 12th April 2010. The eviction decree is dated 23rd March 1992. The petitioner has kept the execution pending by raising obstruction without any supporting pleadings and evidence to show that he has any right in respect of plot no. 112, in respect of which there is an eviction decree.

15. In the absence of any substantive pleadings and supporting evidence indicating any right of the petitioner in respect of the suit premises, the impugned order rejecting the delay condonation application would not warrant any interference. Even otherwise, no sufficient and justified ground is raised to condone the delay of 207 days in filing the appeal. In the absence of any sufficient cause shown for the delay and justifiable ground for condonation, the division bench of the small causes court has rightly rejected the application for condonation of delay.

16. The scope of interference in the exercise of power under Article 227 of the Constitution of India is no longer res integra.

The Hon'ble Apex Court in the decision of ***Shalini Shyam Shetty and Anr Vs. Rajendra Shankar Patil***[2] has explained the scope of interference in exercising jurisdiction under Article 227 of the Constitution of India. It is held that the writ jurisdiction under Articles 226 and 227 of the Constitution of India must be exercised sparingly in cases of patent perversity, where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In view of the well-settled legal principles laid down by the Apex Court, I find no reason to exercise writ jurisdiction to entertain this writ petition.

17. The order dated 22nd July 2026, relied upon by the learned counsel for the petitioner in the review petition filed by another obstructionist, would not assist the petitioner. It appears that the petition was already dismissed and the review petition is filed by another obstructionist. The review petition appears to be pending. Hence, pendency of the review petition would not be a ground to interfere with the impugned order.

18. In view of the facts and circumstances of the case, as

2 (2010) 8 SCC 239

discussed in the above paragraphs, I see no reason to exercise discretionary jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order. The petition is devoid of any merit.

19. The interim application is filed for amendment to the petition to rely upon the documents I have already considered in the above paragraphs. Hence, the interim application is disposed of in the aforesaid terms.

20. For the reasons recorded above, the writ petition is rejected.

(GAURI GODSE, J.)