
(2018) 11 BOM CK 0085
In the Bombay High Court
Case No : Writ Petition No. 13499 Of 2018

Rajendra Ramakant Vedpathak	Vs	APPELLANT
Tarvidersingh Harbansingh Popali And Ors		RESPONDENT

Date of Decision : 29-11-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Order 1 Rule 10

Citation : (2018) 11 BOM CK 0085

Hon'ble Judges : M. S. Sonak, J

Bench : Single Bench

Advocate : Saurabh M.Railkar

Final Decision : Dismissed

Judgement

1. Heard Mr.Railkar, the learned counsel for the Petitioner.
2. The challenge in this Petition is to the orders dated 17 November 2018 made below applications at Exhibit Nos.114, 116 and 118 in the course of execution of decree made in Civil Suit No.71 of 2008 and connected matters.
3. Mr.Railkar, the learned counsel for the Petitioner points out that the Petitioner or his predecessor-in-title were deliberately not made as parties in Civil Suit No.71 of 2008. He therefore submits that the decree made in the said Civil Suit is clearly not binding upon the Petitioner. He points out that the Petitioner has also instituted a substantive suit in which he has inter-alia prayed for declaration that the decree in Civil Suit No.71 of 2008 is not binding upon the Petitioner. There were also reliefs seeking restraint from dispossession, in pursuance of the decree in Civil Suit No.71 of 2008 and execution proceeding No.21 of 2014. Shri Railkar submits that originally in the year 1987, the father of Respondent No.1 had filed Regular Civil Suit

No.253 of 1987 for possession of the suit premises against both the parties in R.C. Suit No.71 of 2008 as well as the predecessor-in-title of the

Petitioner. Such Suit had in fact been dismissed. Mr.Railkar submits that this is a very strong ground on basis of which the execution of decree ought

not to be permitted against the Petitioner.

4. Mr.Railkar finally submits that the suit premises are the only premises in which the Petitioner carries on his business and grave and irreparable

prejudice will occasion the Petitioner if he is evicted from the suit premises in pursuance of execution of decree in Regular Civil Suit No.71 of 2008 or

the execution proceeding taken out therein. For all these reasons Mr.Railkar submits that the impugned order warrants interference.

5. Having considered the aforesaid submissions and perused the material on record including the impugned orders, it is necessary to observe that this

petition is a gross abuse of the process of the Court and warrants dismissal by imposing of exemplary costs. The reasons for stating so are set out

briefly hereafter.

6. The decree for eviction in Civil Suit No.71 of 2008 has repeatedly attained finality right up to the Hon'ble Apex Court. By way of a second round of

litigation, Petitioner obstructed the execution of such decree which had attained finality on identical grounds which were today raised in the present

Petition. All such grounds were considered in great detail not only by the executing Courts which dismissed the plea for obstruction of the execution of

the decree but also by this court in its judgment and order dated 28 June 2018 in Writ Petition No.2436 of 2018 instituted by the Petitioner. This Court,

made specific observations not only in regard to the demerits of the Petitioner's contentions but also with regard to the conduct of the Petitioner.

7. The observations in the judgment and order dated 28th June 2018 in Writ Petition No.2436 of 2018 in paragraph Nos.12 to 17 are reproduced for

reference and convenience.

'12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record.

Mr. Kulkarni heavily relied upon the finding recorded by the learned trial Judge against issue No.1 in Civil Suit No.253 of 1987 decided on 28.02.2006.

In that proceedings, Harbansingh Punjabi (plaintiff) contended that defendant No.1 Waman had initially sublet the suit premises to the defendant No.2

Ramakant. During the pendency of that Suit, defendant No.2 Ramakant died and his widow and son Anil were brought on record. Anil was examined

at exhibit 86. In paragraph 15, the learned trial Judge referred to rent receipts produced by the plaintiff's witness at exhibits-116 to 120, which were in

the name of defendant No.1 Waman. Defendant produced notice dated 09.10.1985 at exhibit-100, which was sent by the plaintiff through his

Advocate Shri Bhagwat to his different tenants. The said notice was sent to 4 tenants namely,

(i) Pralhad Narhar Soundankar,

(ii) Ramakant Baburao Banwadikar (defendant No.2),

(iii) Indrayani Bhagwat,

(iv) Kissan Gundappa Khardikar.

The learned trial Judge, therefore, held that the very fact that the plaintiff had sent notice to the defendant No.2 - Ramakant by referring him as a

tenant goes to show that plaintiff admitted that defendant No.2 was also his tenant.

13. In paragraph 18, the learned trial Judge reiterated that finding. Thus, the learned trial Judge held that defendant No.2 is also tenant solely on the

basis of notice dated 09.10.1985 and did not deal with the rent receipts exhibits 116 to 120 issued in favour of the defendant No.1. It is no doubt true

that plaintiff did not challenge that order and had attained finality. Be that as it may, Civil Suit No.71 of 2008 was instituted only against Waman, and

Ramakant was not impleaded therein. It is material to note that in the written statement filed by Waman, no plea was taken that Suit is bad for non-

joinder of the necessary party namely, Ramakant or his legal representatives as in the earlier Suit, Ramakant was also recognized as a tenant along

with Waman. In fact, in the written statement filed by Waman, he admitted that he had taken the suit premises 60 years back from one Harbansingh

Popali @ Punjabi and that Harbansingh is the landlord and defendant was and is his tenant. On behalf of the defendant No.1, Waman, obstructionist's

brother Anil appeared as Power of Attorney. Even he did not depose that Suit is bad for non joinder of legal representatives of Ramakant. Defendant

had examined three witnesses including Anil. The learned trial Judge decreed the Suit on 26.08.2010. Appeal preferred by legal representatives of

Waman was dismissed on 01.01.2014. Even before the District Court, no plea

was taken that Suit is bad for non-joinder of necessary party, namely the legal representatives of Ramakant. The legal representatives of Waman instituted Writ Petition in this Court, which was summarily dismissed on 26.04.2016. Even before this Court, no such contention was agitated. The legal representatives of Waman preferred S.L.P. before the Apex Court, which was dismissed on 08.06.2016.

14. It is also interesting to note that perusal of application exhibit-51 filed by the obstructionist shows that he merely alleged that he is carrying on

business in the suit premises. Obstructionist nowhere claimed that he has any right, title or interest in the suit premises. Mere carrying on business in

the suit premises that by itself will not mean that obstructionist has right, title or interest in the suit premises. Mr. Kulkarni submitted that obstructionist

is son of Ramakant is not in dispute. Upon death of Ramakant, tenancy will devolve upon his legal representatives, and therefore, the tenancy rights

will also devolve upon the obstructionist. Mr. Kulkarni submitted that the Court may taken judicial notice of this fact. He relied upon paragraphs 2 to 5,

grounds (a) (i) to (iv) and (vi) of the application exhibit-51. It is not possible to accept this submission for more than one reason. I will proceed on the

premise that obstructionist is really carrying on business in the suit premises. No explanation, worth the name, is given by the obstructionist as to why

he did not file application under Order I, Rule 10 of C.P.C. for his impleadment in Civil Suit No.71 of 2008. It is inconceivable that obstructionist will

not be aware of litigation in respect of the suit premises where he claims to be carrying on business. This is to be appreciated on the backdrop of the

fact that his real brother Anil had participated in the earlier Suit as also in the subsequent Suit. Thus, even if I accept that legal representatives of

Ramakant were not impleaded, nothing precluded obstructionist from filing application under Order I, Rule 10 for his impleadment. Secondly, though

ample opportunity was available to the defendant at various stages of the Suit, no plea was taken that Suit is bad for non-joinder of necessary party. In

the proceedings of Civil Suit No.71 of 2008, nowhere Anil came out with the case that obstructionist is occupying the suit premises. Even after the

death of Waman, brother of obstructionist Anil did not disclose that the obstructionist is also legal heir of Ramakant. Thirdly, as Anil, one of the heirs

of Ramakant contested the Suit right upto the Apex Court, estate of deceased

Ramakant was represented.

15. The learned trial Judge has observed in paragraph 7 that the obstructionist is not claiming any independent right. For the reasons recorded in

paragraph 7, I do not find that the learned trial Judge committed any error in rejecting application exhibit-51.

16. In so far as the District Court is concerned, the learned District Judge considered this aspect in paragraphs 16 to 18 and dismissed the Appeal. For

the reasons recorded in these paragraphs, I do not find that the learned District Judge committed any error in dismissing the appeal. The obstructionist

was not in a position to demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are

contrary to the evidence on record. Obstructionist was also not in a position to demonstrate that no reasonable person would have arrived at the

conclusions other than arrived by the Courts below.

17. That apart, in my opinion, this is not a fit case for invocation of powers under Article 227 of the Constitution of India. Civil Suit No.71 of 2008 was

decreed as far back as on 26.08.2010 and the said decree was challenged right upto the Apex Court. A perusal of the Apex Court order shows that

legal representatives of Waman were given three months time to vacate the suit premises subject to filing a usual undertaking within a period of two

weeks stating that they will not create third party interest in the suit premises and shall pay occupational charges to the respondents and shall

peacefully vacate the suit premises concerned at the end of three months, without fail. Though time was taken, during the course of hearing, Mr.

Kulkarni stated that no undertaking is filed in the Apex Court and no possession is handed over. In view of the conduct of the legal representatives of

Waman as also the conduct of the obstructionist in maintaining silence during the proceedings of Civil Suit No.71 of 2008, no case is made out for

invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.'

8. This Court, even after dismissing the Writ Petition No.2436 of 2018 instituted by the Petitioner did grant some limited protection to the Petitioner

restraining his dispossession, since, the Petitioner expressed desire to question the judgment and order dated 28th June, 2018 before the Hon'ble Apex

Court. This was subject to the Petitioner filing an undertaking that in case he is

unable to obtain suitable orders from the Hon'ble Supreme Court within six weeks then he will hand over vacant and peaceful possession of the suit premises to the Respondent No.1. The Petitioner filed such undertaking.

9. Petitioner took every benefit of this limited protection, no doubt by filing an undertaking. In paragraph 5 of the undertaking which is dated 10 July

2018, the Petitioner has categorically stated that if he does not obtain suitable orders within six weeks of stay of the impugned decree, he will hand

over the vacant and peaceful possession of the suit premises to the decree holders.

10. There is no dispute that the Petitioner questioned the judgment and order dated 28 June 2018 made in Writ Petition No.2436 of 2018 before the

Hon'ble Apex Court. The learned counsel for the Petitioner accepts that the Special Leave Petition was dismissed. This means that the Petitioner,

consistent with his undertaking, was duty bound himself to hand over the possession of the suit premises to the decree-holders, having succeeded in

delaying execution proceedings for as such unreasonable period of time.

11. Instead,Â Petitioner, onÂ 17 NovemberÂ 2018,Â files an application seeking following reliefs -

'(a) The Third Party may be allowed to deliver the possession of the property mentioned in R.C.S. No.361/2016 to the Hon'ble Court.

(b) The Registrar of this court may be directed to put the seal of the Hon'ble Court to the captioned property.

(c) Till the decision in R.C.S No.361/2016 the possession of the captioned property may be remain with the Registrar of this Hon'ble Court.

(d) Other just and equitable orders may be passed in the interest of justice.

An affidavit is filed separately herewith.'

12. From the aforesaid application it is evident that the Petitioner does not insist upon himself remaining in possession of the suit premises but states

that he may be allowed to deliver the possession of the suit premises to the Court and thereafter Court should put a seal on the suit property. The

relief is that until R.C.Suit No.361 of 2016, which is the fresh suit instituted by the Petitioner is decided, the suit property should remain with the

Registrar of the Court. In fact, this application virtually seeks interim reliefs in R.C. Suit No.361 of 2016, though, such application is taken out in

execution proceeding bearing Darkhast No.21 of 2014 in relation to execution of

decrees which have attained finality.

13. Significantly, even the contentions raised in this application which came to be dismissed by the impugned orders are in no manner different from

the contentions which were considered and rejected in detail, not only by the executing Court but also by this Court by its judgment and order dated 28

June 2018.

14. From the reliefs applied for in this application dated 17 November 2018, it is clear that the plea now raised that the Petitioner is in dire need to

remain in the suit premises is also false. In any case, and by itself, this would never be a relevant consideration. The only reason why this aspect is

adverted to is to highlight the conduct of the Petitioner.

15. The executing Court has correctly dismissed the application dated 17 November, 2018 and further granted police protection to the execution of the

decree. Just as decree was to be executed, this Petition was mentioned by seeking urgent circulation and the very contentions which were rejected in

the earlier round were pressed in the present Petition as well. It is apparent that object was to create a situation of an extreme urgency, thereby

leaving the Court with no time to appreciate the complete facts and take a chance to secure some restraint on the execution proceedings. It is in these

circumstances, it is necessary to record that this is nothing but an abuse of the process of Court.

16. The impugned orders have been validly made and call for no interference whatsoever. In the case of *Satyawati Vs. Rajinder Sing and Another*

â?" (2013) 9 SCC 491, the Hon'ble Apex Court has observed that the tendency to create undue obstruction to the execution of the decree is required

to be dealt with in a firm manner. If the litigants have secured decrees and execution of such decrees is unreasonably delayed, then, litigants will

eventually lose faith in the judicial process.

17. It is obvious, Petitioner, is in breach of the undertaking furnished by him to this Court. In terms of the undertaking, it was the duty of the Petitioner

to have handed over possession of the suit premises to the decree holders, no sooner his Special Leave Petition against judgment and order dated 28

June 2018 came to be dismissed.

18. For all aforesaid reasons, this Petition is dismissed with costs assessed at Rs.25,000/-. The executing Court to proceed with the execution and also

execute this order for payment of cost in case the Petitioner does not deposit such cost before the executing Court within a period of two weeks from today.

19. This Petition is accordingly dismissed with costs as aforesaid.