

R.D.No.20/2010
Habib.vrs. Shashidharan

ORDER BELOW EXH.56

(Passed on 31st August, 2019)

1] Decree Holder filed application for directing Judgment Debtor to deposit amount to word illegal use and occupation of suit premises. He submitted that Decree Holder had filed suit for possession bearing R.C.S. No.23/2004 against Judgment Debtor. The suit came to be decreed on 24.9.2010. Judgment Debtor preferred appeal bearing R.C.A. No.544/2010. The said appeal came to be dismissed on 7.10.2010. The Judgment Debtor had not objected suit property in appeal and evidence. The Judgment Debtor raised objection in first time in execution on 5.3.2015.

2] Present Judgment Debtor had filed R.C.S. No.14/2015 for perpetual injunction to C.J.J.D. Umred. He had filed application for temporary injunction. J.Dr. has not raised objection about identity of suit property. The same has raised in the execution application. The property in execution and in the suit are and one in same.

3] In R.C.A. No.544/2010 Hon'ble District Judge granted the stay on condition that Judgment Debtor shall deposit Rs.1,000/- monthly compensation to Decree Holder till delivery of possession.

J.Dr. had not complied the said order. Hence, he filed this application.

4] Judgment Debtor filed his reply at Exh.61 and opposed application in toto.

5] Heard learned counsel for Decree Holder Mr. Mandaokar and Judgment Debtor Mr. Jetha. Learned Counsel for Decree Holder submitted that Judgment Debtor is prolonging execution of decree. He is bound to pay damages to Decree Holder. He further submitted that Rs.1,000/- shall be taken into consideration. Judgment Debtor are filing false applications. To support his contention, he relied on **AIR 1999 Supreme Court 882. Hon'ble Supreme Court in para No.4, 6 observe that “in circumstances for protecting the interest of Judgment Creditor..... the respondent are directed to pay compensation at the rate of R.s10 sq.ft. From 1984 till today”.**

6] Learned counsel further relied on **Atmaram .vrs. Federal Motors reported in 2005 Vol. III Bombay CR 274.** Hon'ble High Court observed that 'while passing an order under Rule 5 Order 41 of C.P.C., the Appellate Court does have jurisdiction to put the applicant on such terms as would in its opinion reasonably compensate to Decree Holder for loss occasioned of delay if execution of decree of the grant of stay order'.

7] I have gone through the both Judgments. Observation of Hon'ble Courts applicable to the present facts of the case.

8] Learned counsel for Judgment Debtor Mr. Jetha argued that Judgment Debtor is not occupied premises illegally. In prayer it is not pleaded illegal occupation. Decree Holder did not mention the law. Judgment is not applicable to the present facts of the case. Application is not maintainable. Every application must be filed as per the Law. Application has no merit, hence, liable to be rejected.

9] It is not disputed that Judgment Debtor Shashidharan challenged the order in R.C.S. No.23/2004 before Hon'ble District Court. Hon'ble District Court granted stay on condition that Judgment Debtor shall pay Rs.1,000/- monthly compensation from September 2010 till delivery of possession or till final disposal of this appeal. Both appeal before Appellate Court have been dismissed.

10] I have gone through the entire record. Learned counsel for Judgment Debtor submitted that during the appeal, Decree Holder did not ask the amount. Furthermore both appeals have been dismissed against Judgment Debtor. Appellate Court while granting stay with a view that Judgment Debtor is liable to pay Rs.1000/- compensation to Decree Holder. This execution proceeding is pending since 2010. Possession is not delivered to Decree Holder till

today. Decree and Order of R.C.S. No.23/2004 is confirmed by the Courts. Therefore, in my view, possession of Judgment Debtor on suit property is illegal, hence, as per the observation of Apex Court, Judgment Debtor is liable to pay compensation Rs.1,000/- per month from 2010 till today or till delivery of possession. It is not proper to keep possession without paying amount to decree holder. He is entitled the compensation of his property. Denial of compensation to Decree Holder from Judgment Debtor is denial of fruit of decree, which Decree Holder entitled as per Law. Hence, I pass following order :-

ORDER

- 1) Application is allowed.
- 2) Judgment Debtor is directed to pay compensation Rs.1,000/- per month to Decree Holder from 22.2.2011 till delivery of possession or disposal of this R.D., which is earlier.
- 3) Amount to be deposited within two months.
- 4) Case is disposed off.

Umrer.
Dt.31/08/2019

(A.V. Pandit)
Jt. Civil Judge (Jr.Dn.),
Umrer.