

MHSO130009532010



R.D. No.25/2010

Irappa Patil

Vs.

M/s. Baldava Co. & ors.

ORDER BELOW EXHIBIT- 168

01. The Decree Holders have filed the present application for issuance of possession warrant.

02. The Decree Holders contended that they have filed the present execution proceeding against Judgment Debtors for the possession and arrears of rent and arrears of rent till possession is recovered. In the mean time, Decree Holder Irappa Chanmallappa Patil died and then his legal heirs i.e. Decree Holder No.1 to 4 are added by amendment in the execution proceeding. The suit property is RCS No.533/1991 and the property in the execution petition is the subject matter of the petition. The Decree Holder has filed the proceeding for recovery of possession. Hence, it is necessary to recover the possession of the suit property mentioned in plaint and execution petition from Judgment Debtors and against any person who are obstructed to the Decree Holder for recovery of the same. All the appeal before the the Hon'ble Bombay High Court and before the Hon'ble Supreme Court against the judgment and order passed in RCS No.533/1991 are dismissed. During the pendency of the proceeding, the objector has filed the objection petition below Exh.135, same was rejected by this Court. Hence, he filed appeal before

Hon'ble District Court bearing No. RCA No.93/2024. Same was allowed and Hon'ble District Court directed to lead evidence of the objector and also stayed the execution proceeding before this Court. Aggrieved by the same, Decree Holder filed Appeal from Order No.876/2024 and Interim Application No.15425/2024 before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court has stayed the impugned order which was passed in RCA No.393/2024 by the Hon'ble District Court. However, the Hon'ble High Court has not stayed the present execution proceeding. Therefore, the Decree Holder has filed the present application for recovery of possession of the suit properties against Judgment Debtor No.1 to 8 or any person who obstructed for the same through Bailiff.

03. The objector has filed the say at Exh.172 and thereby strongly objected the application. He contended that the Decree Holder has filed appeal at Hon'ble High Court against the order passed in Civil Appeal No. 93/2024 by Hon'ble District Court, Barshi. Therefore, the matter and legal issue is sub-judice before the Hon'ble Bombay High Court. Decree Holder could not file the present application for issuance of possession warrant, when the matter is sub-judice before the Hon'ble High Court. If the Decree Holder wants to do so, he will file the appropriate application before the Hon'ble High Court. The present application of the Decree Holder is premature and not tenable in the eyes of law.

Hence, prayed for rejection of the application.

04. Perused the record before me. Heard both sides.

05. The Decree Holder has filed the present proceeding for recovery of the possession of properties mentioned in execution proceeding and recovery of arrears of the rent. It is fact on record and admitted fact by both parties that the objector has filed the objection petition below Exh.135, same was rejected by this Court, aggrieved by the same, he has filed RCA No.93/2024 before Hon'ble District Court. The Hon'ble District Court directed to this Court to lead evidence of the objector. Aggrieved by the same order, the Decree Holder has filed Appeal from Order No.876/2024 and Interim Application No.15425/2024 before the Hon'ble High Court. This Court has received the writ of Hon'ble High Court in the present matter. As per order para No.6, the Hon'ble High Court directed that, "till further orders the impugned order shall remain stayed". Thus, the Hon'ble High Court has stayed the impugned order passed in RCA No. 93/2024. The matter regarding the suit property and legal issue is sub-judice before the Hon'ble High Court. In spite of that, the Decree Holder is insisting for issuance of possession warrant on the ground that Hon'ble High Court has passed the order and thereby only the order passed in RCA No.93/2024 was stayed and the entire execution proceeding has not been stayed by the Hon'ble High Court. It is the contention of the Decree Holder that

considering the order of the Hon'ble High Court, entire proceeding should not be considered as stayed.

06. In the light of the submission, the Decree Holder by filing of this present application, pressing for possession warrant. However, discussed herein above, the proceeding is sub-judice before the Hon'ble High Court and this proceeding is decisive in nature to determine the right of parties, in spite of such stay, if the application of issuance of possession warrant would be allowed, then very purpose of filing of writ petition will be frustrated and again it will create multiplicity of litigation, conflicting of order and it will tantamount that interfering the proceeding pending before the Hon'ble High Court. In such circumstances, when the proceeding is sub-judice before the Hon'ble High Court, to avoid the complications and multiplicity of litigation, it is just and necessary to keep the matter in abeyance till further direction of the Hon'ble High Court. Hence, I proceed to pass following order;

ORDER

The application Exh.168 is rejected.

(Dictated and pronounced in open Court.)

Barshi.
Date : 02/07/2025.

(Smt. P.V. Raut)
Jt. Civil Judge (J.D.), Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri.S.R. Barangule
(b)	Court	:	Smt. P.V. Raut, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order declared on	:	02/07/2025
(d)	Judgment /Order signed by P.O. on	:	03/07/2025
(e)	Judgment /Order uploaded on	:	03/07/2025