

ORDER BELOW EXH.625

Objector namely Pradip Gajanan Yewale moved an Application under order XLVII for review of order vide Exh.619 read with section 151 of the Code of Civil Procedure (in short CPC). Decree Holder (in short D.H.) has filed Say below same exhibit.

2] According to this Objector, though issue was framed regarding the objection so raised by this Objector but the said issue is not yet decided by the Executing Court. Thus, it is prayed that Order vide Exh.619 regarding reissuing Possession Warrant be stayed and it be reviewed. It is further prayed that, if the Possession Warrant is issued in view of order vide Exh.619 then the Symbolic Possession may be directed against this Objector as per order dated 11.08.2022.

3] According to D.H., this Objector who appeared in the present Darkhast failed to adduce evidence inspite of the opportunity. However, the Executing Court has made observation in paragraph No.9 which is self sufficient. As such, no objection is pending. Hence, prayed for rejecting the Application.

4] Heard Mr.S.S.Bamane, learned advocate for Objector Pradip Gajanan Yewale. Heard Mr.A.V.Salunkhe, learned advocate for D.H.

5] Perused the Application and Say. I have gone through the

Order dated 11.08.2022 (Common Order below Exh.01, 354, 355 and 356). I have also gone through the Order dated 19.11.2021 and 29.11.2021 vide Exh.01.

6] Perusal of present Application (Exh.625) shows that, on the one hand Objector is accepting the Order dated 11.08.2022 directing the Symbolic Possession and on the other hand, taking a plea that the Issue so framed remained undecided.

7] During the course of argument, it has been specifically questioned to the learned advocate for Objector as to the knowledge of the Order, request to the Executing Court regarding decision on remaining Issues, regarding inspection of record and relevant steps to get the Issue decided. In answer to the aforementioned questions, the learned advocate for Objector is fair enough to submit that opportunity of hearing given to the Objector. The only grievance is that Issue No.3A remained undecided. However, all efforts in view of aforementioned questions were done orally.

8] Perusal of paragraph No.9 of the Judgment and Order dated 11.08.2022 shows that, there is reference as to this Objector and it has been observed that, this Objector failed to adduce evidence. Thus, it appears that the finding as to Issue No.5 covers all the Objectors. This aspect shows that all Issues had been dealt with. Had it been the case of this Objector that, he felt prejudiced due to undecided Issue in view of Order dated 11.08.2022 then, he would have taken immediate steps to take efforts to do the needful and the alleged fact to be brought to the notice of the Executing Court. Even the J.D No.2A-1 could have extended his extreme support to this Objector. On

the contrary, it appears that, this Objector is satisfied with the Order of “Symbolic Possession” without assessing its interpretation. Hence, he reported no objection to the Possession Warrant if it is directed for Symbolic Possession.

9] It appears that, this Objector remained quite attentive before passing of order dated 11.08.2022 (Common Order below Exh.01, 354, 355 and 356). This aspect can be gathered from the Order dated 13.04.2022 vide Exh.574. It will be not out of place to mention here that, *this Objector had been warned in terms of clause No.2 of the operative order : “ 2] The third party Mr. Pradip Gajanan Yewale is directed not to move such unnecessary applications henceforth and to create obstacle in the decision of the court on merits unless his right, title and interest in respect of the suit property is decided on merits.”* It is surprising to note that, *this Objector even failed to obey the order of the court in terms of clause No.1 of the said order which runs as : “ 1] Application is rejected with costs of Rs.300/-(Rupees Three Hundred only).”*

10] All the aforementioned aspects show that, there is no prejudice to this Objector. He has chosen to accept the order dated 11.08.2022 and remained mute spectator. However, the order vide Exh.619 reissuing Possession Warrant gave another chance to this Objector to create obstruction to the execution of decree which has been filed in the year 1978 arising out of Judgment and order passed in RCS No.1077/1928 (Matter is 45 years old). Not only this, the Objector is praying for review of order vide Exh.619 of which no grounds made for.

11] It is relevant here to observe that, instead of proceeding with the matter here, after framing of issues and after giving opportunity to adduce evidence to the Objector, he has preferred R.C.S. No.96/2019 before Civil Judge Junior Division, Wai. However, it is informed that the plaint has been rejected in the aforementioned suit. It appears that this Objector went on disobeying the Order of the Court and frequently appearing to obstruct the execution of decree and accompanied with J.D No.2A-1. As such, neither the grounds for review is made out nor the question of Symbolic Possession survives. Issue No.3A already stood decided and now, this Objector is estopped from asking the relief and especially in terms of non compliance / disobedience of the Orders of Executing Court. In view of the aforementioned conduct of the Objector, following order is passed :

ORDER

- 1] Application (Exh.625) is rejected with costs.
- 2] The Objector Shri Pradip Gajanan Yewale shall pay costs of Rs.50,000/- (Rupees Fifty Thousand) to the Decree Holders within one month from the date of this order, failing which Decree holders are entitled to recover the same at the rate of interest 2% p.a. from the date of failure till the final realization of entire amount.

Place : Wai
Date : 09.12.2024

(**Priti D. Taru**)
Civil Judge Senior Division, Wai
Dist. Satara.
