



Presented on : 28.02.2020
Registered on : 06.02.2021
Decided on : 22.11.2023
Duration : Y:03 M:08 D:22

CNR No – MHSCA-10000472021
IN THE COURT OF SMALL CAUSES AT MUMBAI
(Appellate Bench)
Execution Appeal No.32 of 2021
in
Obstructionist Notice No.20 of 2002
in
L.E & C Suit No.788/826 of 1986

Ashraf Ali S/o. Nasibulla Khan

Age 60 years, Occ : Business

Plot No.20, Mazgaon Tank Bunder Estate,

Mumbai 400 010.

.. Appellant

(Org. Obstructionist)

Versus

The Board of Trustees of the Port of

Bombay a statutory body (Deleted)

The Board of Mumbai Port Authority

Constituted under the Major Port Trusts

Act, 1963 as a body corporate,

having their Administrative Office at

Vijay Deep, Shoorji Vallabhdas Marg,

Fort, Bombay 400 038.

.. Respondents

(Org. Plaintiffs)

And

1.Nasibulla Khan (since deceased)

1(a)Mrs. Sabira W/o. Nasibulla Khan

1(b)Saukatali S/o. Nasibulla Khan

1(c)Rahatali S/o. Nasibulla Khan

1(d)Mohamedali S/o. Nasibulla Khan

1(e)Sahidali S/o. Nasibulla Khan

1(f)Asrafali S/o. Nasibulla Khan

1(g)Maqsoodali S/o. Nasibulla Khan

All are residing at Room No.21
2nd Floor, Shere, Ghorapdeo Road,
Bombay 400 010.

.. Respondents
(Org. Defendants)

Shri S.P. Shrivastava Advocate for Appellant.
Smt.A.R. Khanna Advocate for Respondents.

Coram : S.S. Deshpande, Addl. Chief Judge
And
S.V. Deshmukh, Judge
Court Room No.3
Date : 22.11.2023

Oral Judgment:- (Per S.S. Deshpande, Addl. Chief Judge)

Original Obstructionist in Obst. Notice No.20 of 2002 in LE & C Suit No.788/826 of 1986 filed this appeal against the Judgment and Decree passed by the learned Executing Court (C.R. No.24) dated 30.01.2020. (Hereinafter parties will be referred as “Obstructionist” and “Plaintiff” as per their original nomenclature in the Obstructionist Notice).

Case of Obstructionist:-

2. It is case of Obstructionist that suit filed by plaintiff against defendant is bad-in-law as this Court has no jurisdiction to try the suit. There is no cause of action to file Obstructionist Notice, hence, said Obstructionist Notice is not maintainable. Shri Bose is not authorized to file the Obstructionist Notice. He is not conversant with the facts of the case. It is further case of obstructionist that plaintiff is not entitled to execute the decree against the obstructionist as structure is situated over the plot of land and plaintiff is not owner and landlords of the structure which is in occupation of the obstructionist. Decree passed by

the trial Court is of only plot of land and not of structure. Therefore, plaintiff has no right to execute the decree against the structure and against this obstructionists. Provisions of Presidency Small Cause Court Act (in short P.S.C.C Act) are not applicable and provisions of Rent Act are applicable to the present case. Hence, decree is nullity. Tenancy is not terminated, hence, decree cannot be executed against the obstructionist. Tenancy is also not terminated on the ground of arrears of rent. Therefore, decree is null and void etc.

Case of Plaintiff :-

3. It is case of original plaintiff that though plot of land was let out as per terms of lease plaintiff is entitled to remove structure on that plot of land. Present Obstructionist is defendant's legal heirs and party to the suit, hence, he has no independent right to obstruct the execution proceeding. Suit is rightly filed under the P.S.C.C Act. Maharashtra Rent Control Act (in short M.R.C Act) and Bombay Rent Act is not applicable as what was let out is plot of land and not premises etc.

4. Learned trial Court by Judgment and Order dated 30.01.2020 made the Obstructionist Notice absolute. Being aggrieved and dis-satisfied Original obstructionist has filed this appeal on the grounds specifically mentioned in the appeal memo.

5. Heard learned Advocate Shri S.P. Shrivastava for appellant and learned Advocate Smt. A.R. Khanna for respondents. Following points arise for our determination and we have recorded our findings with the reasons given there under as follows :-

Sr.No.	Points	Findings
1.	Whether decree under execution is nullity ?	In the Negative.
2.	Whether Obstructionists prove that he has independent right, title and interest in the suit property ?	In the Negative.
3.	Whether Obstructionists prove that they are protected under the provisions of Maharashtra Rent Control Act, 1999 ?	In the Negative.
4.	Whether Judgment and Decree passed by the learned trial Court needs interference ?	In the Negative.
5.	What Order ?	As per final Order.

REASONS

As to Point No.1 :-

6. Learned advocate for appellant argued that plaintiff filed suit against the defendant in respect of plot of land. Plaintiff is not owner of structure and therefore, suit is not maintainable. He further argued that as there are structure provisions of P.S.C.C Act are not applicable. Provisions of M.R.C. Act are applicable and plaintiff is not entitled to removal of structure or not entitled for possession of structure. Appellant is paying rent regularly and as per Judgment of Hon'ble Supreme Court appellant paid all the due amount. As per compromise formula of Hon'ble Supreme Court appellant become tenant. He further argued that there was no valid decree as tenancy was not terminated as per Transfer of Property Act. Hence, appeal be allowed and Obstructionist Notice be discharged.

7. On the other hand, learned advocate for respondent argued

that Respondents/plaintiffs given plot of land to defendant on lease and lease was validly terminated. Suit filed by plaintiff is LE & C Suit and it was decreed. In that suit itself it is held that plaintiff is entitled for possession of plot of land by removing structure thereon and hence, decree is not nullity.

8. He further argued that as plot of land was leased by plaintiff no provisions of M.R.C Act is applicable, as plot of land is not a premises as per M.R.C Act, therefore, decree is valid. He further argued that payment of rent is no question, in this case whatever amount paid by obstructionist is paid as compensation and not as a rent. Formula presented by Hon'ble Supreme Court for compromise was not followed by the appellant. There was no compromise as per directions of Hon'ble Supreme Court in another case. In this case no parties approached to the Hon'ble Supreme Court. Whatever money deposited is a compensation and without prejudice to the rights. Hence, appellant cannot get status of tenant. He further argued that plaintiff invoked correctly the provisions of P.S.C.C Act, hence, decree is valid and it is not nullity.

9. We have considered the arguments of both parties, it is clear from decree itself that decree is passed for plot of land and defendants are directed to hand over possession of plot of land by removing the structure standing thereon. Hence, though obstructionists are in possession of suit property, they are bound by decree. In this case, it is clear from pleadings of plaintiff that plaintiff filed suit for possession of plot of land and therefore, provisions of P.S.C.C Act are applicable. Plot of land is not premises as per Rent Act and hence,

provisions of Rent Act are not applicable. Being Officer of the Port Trust applicant have right to file Obstructionist Notice, hence, objection that Mr.Bose is not having valid authority is not tenable. Suit property is plot of land and hence, as per P.S.C.C Act this Court have jurisdiction to decide the L.E & C Suit. Hence, decree passed by the learned trial Court is correct as trial Court had/have jurisdiction to decide the suit. It is admitted fact that land is owned by plaintiff and leased to defendant. Therefore, plaintiff is landlord and owner of plot of land and as per decree he is entitled for plot of land by removing structures thereon. Therefore, it can be easily said that decree is validly executable. Hence, we answer Point No.1 in the Negative.

As to Point No.2 :-

10. It is contention of Obstructionist that they have independent rights in the suit property. But they are claiming their rights through deceased original defendant. Plaintiff filed suit against the original defendant and during pendency of suit original defendant is died and obstructionist is brought on record as legal heirs of original defendant. Obstructionist not pleaded and proved that he have independent right except the original defendant L.R. Obstructionist is also defendant and suit is decreed against him. Appeal filed by him against the original decree is also dismissed. Therefore, he is bound by decree. Obstructionist failed to prove that he have independent rights beside the rights of defendant. No other stand was taken by him that he has right through another person except the defendant. Hence, it can be easily said that obstructionist failed to prove his independent rights in the suit property. Therefore, we answer Point No.2 in the

Negative.

As to Point No.3 :-

11. It is contention of Obstructionists that he paid amount as per formula given by Hon'ble Supreme Court and hence, he become tenant and therefore, he is protected as per provisions of M.R.C Act. But, there is no evidence that there is compromise as per formula of Hon'ble Supreme Court. Obstructionist only deposited the amount, said amount is accepted as compensation and not as rent. The Hon'ble Supreme Court in one case given formula based on Kirolaskar Committee and directed B.P.T to compromise with the lessees. But all lessees not made formalities and hence, all lessees not become tenant. Obstructionists has to prove that he paid amount and B.P.T accepted the said compromise and he became tenant. In this case, no other formalities are done by obstructionists and he has only deposited money as compensation. Deposit of money is not sufficient to became tenant, as formula given by Hon'ble Supreme Court must be accepted by both parties, there is no evidence that B.P.T accepted the said formula in respect of suit premises or suit property and there was compromise as per said formula. Hence, it cannot be said that Obstructionist became tenant and he is entitled for the protection as per M.R.C Act. Hence, we answer this Point in the Negative.

As to Point No.4 :-

12. Learned trial Court assessed evidence before it properly and made Obstructionist Notice absolute correctly. Therefore, there is no need of interference in the Judgment and Decree passed by the learned trial Court. Hence, we answer this Point in the Negative.

As to Point No.5 :-

13. We think decree passed by the learned trial Court in LE & C Suit No.788/826 of 1986 is not nullity, it is valid and executable. Obstructionist failed to establish his independent rights and therefore, they are entitled for nothing. Hence, if appeal is dismissed with costs, it will meet ends of justice. Hence, we proceed to pass following order.

ORDER

1. Appeal is dismissed with costs.
2. Judgment and Decree passed by the learned trial Court (Court Room No.24) in Obst. Notice No.20 of 2002 in LE & C Suit No.788/826 of 1986 dated 30.01.2020 is hereby confirmed.
3. Record and Proceedings be sent back to the record room of this Court.
4. Decree be drawn up accordingly.
5. Inform the learned trial Court accordingly.

I Agree,

**Sd/-
(S.V. Deshmukh)
Judge
Dt.22.11.2023**

**Sd/-
(S.S. Deshpande)
Addl. Chief Judge
Dt.22.11.2023**

Jt dictated & transcribed on - 22/11/2023
Jt checked & signed on - 23/11/2023