



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.220 OF 2018

Gajanan Madanlal @ Madands Vaishnav

VERSUS

Abdul Salam Abdul Sattar

.....

M. Avinash D. Hande, Advocate for the Applicant

Mr. Ashok P. Gaikwad, Advocate for Respondent

.....

AND

WRIT PETITION NO.3414 OF 2018

WITH

WRIT PETITION NO.3787/2017

WRIT PETITION NO.13143/2017

Abdul Salam Abdul Sattar Afghan

VERSUS

Gajanan Madandas Vaishnav

.....

Mr. Amit Tandulkar h/f Advocate for the Petitioner (Through V.C) in
WP No.3314/2018

Mr. S. S. Gangakhedkar, Advocate for Petitioner in WP No.3787/2017

Mr. Vivek L. Kabade, Advocate for Petitioner in WP No.13143/2017

Mr. Avinash Hande, Advocate for Respondent

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 09.03.2026

PER COURT :

1. Heard the learned counsel for the respective parties.
2. Pursuant to the order dated 11.08.2023 passed by the Senior-most Judge of this Court, Writ Petition Nos. 3414/2018, 3787/2017 and 13143/2017 along with CRA No. 220/2018 are placed before this Court. Since all these matters are connected, all these petitions along

with Civil Revision Application are being decided together, taking Writ Petition No. 13143/2017 as the lead matter.

3. The applicant in CRA No. 220/2018 is aggrieved by the order dated 28.08.2018 passed by the District Judge–3, Nanded in Regular Civil Appeal No. 43/2018.

4. The learned counsel for the petitioner narrated the facts of the case and submitted that the applicant is the landlord and the respondent is a tenant in respect of a shop bearing NMC No. 3-6-525, City Survey No.1888, situated at Balaji Mandir Area, Shri Guru Govindsingji Road, Nanded. The applicant – original plaintiff filed RCS No. 1188/2012 before the learned CJJD, Nanded against the present respondent seeking eviction and recovery of possession of the suit shop on the ground of bona fide requirement. The learned CJJD, Nanded decreed the suit vide order dated 29.10.2014. The respondent herein filed Regular Civil Appeal No. 151/2014, and the learned Appellate Court vide order dated 25.06.2015 dismissed the said appeal and confirmed the judgment and decree of the trial court.

5. The respondent thereafter filed Civil Revision Application No. 148/2015 before this Court. This Court, vide order dated 02.09.2015, rejected the said application. Thereafter, the applicant/decreed holder filed Regular Darkhast No. 101/2015 under Order XXI Rule 11 of the Code of Civil Procedure for execution of the decree before the learned Executing Court. The respondent/judgment debtor filed an objection petition at Exhibit–63. The learned Executing Court, after hearing the objection petitioner, rejected the Objection Petition at Exhibit–63 vide order dated 22.02.2018. The respondent/judgment debtor thereafter filed Regular Civil Appeal No. 43/2018, and the learned District Judge,

Nanded allowed the said appeal and remanded the matter to the Executing Court for fresh hearing.

6. The learned counsel for the petitioner submits that the Appellate Court ought not have remanded the matter, as the decree has already been confirmed up to this Court. Therefore, the only step remaining was execution of the decree. The learned Executing Court, while considering the application at Exhibit-63, had rightly rejected the same. It is further submits that the Appellate Court, while recording its finding in paragraph No. 14, remanded the matter without assigning any reasons. Hence, the order passed by the Appellate Court is liable to be set aside.

7. The learned counsel for the respondent submits that the decree under execution is in respect of property CTS No. 1888. However, the decree holder, by showing incorrect boundaries of CTS No. 1888, is trying to take possession of CTS No. 1887, in which the judgment debtor is residing as a tenant. According to the judgment debtor, the decree holder has no concern with respect to CTS No. 1887, and therefore, with an intention to grab the property of the judgment debtor, the decree holder has deliberately shown the boundaries of CTS No. 1887, which is in possession of the judgment debtor since long. Therefore, he supports the order passed by the learned Appellate Court. He further submits that the present Civil Revision Application is not maintainable, and instead, the applicant ought to have filed a Second Appeal.

8. I have heard the learned counsel for the respective parties and perused the order passed by the learned Trial Court whereby the suit was decreed, which reads as under:

“1. Suit is decreed with costs.

2. The defendant do deliver the possession of suit property i.e. shop bearing No. N.M.C. No.3-6-525, City Survey No.1888, Sheet No.1888, situated at Balaji Mandir, area Shri Guru Gobindsinghji Road, Nanded to the plaintiff within one month, from today.”

9. The above order was challenged by filing an appeal, which was also dismissed by the Appellate Court. This Court while considering the Civil Revision Application No. 148/2015 vide order dated 02.09.2015 recorded the finding in paragraph No. 5, which reads as under:-

“5. The landlord is seeking possession on the ground of bonafide requirement. It has come in the evidence that, the landlord is running his business in tenanted premises. The shop which is let out to the present petitioner is in a commercial area. The plaintiff is doing the business of Commission Agency of Haldiram products. The aspect of hardship has been considered. An issue in this regard has been specifically framed. However, the petitioner deliberately choose not to enter into the witness box. Both the Courts on appreciation of the evidence has concurrently come to the conclusion that, the landlord requires the suit premises bonafide for his own use and landlord would suffer greater hardship, if, the decree of eviction is not passed. It is also considered that, the landlord is doing his business in tenanted premises.

With the above findings Civil Revision Application was desmissed thereby confirming the order of the trial Court. Thereafter, in R.D. No. 101/2015, the Judgment Debtor filed Objection Petition vide Exhibit-63 wherein the Executing Court recorded findings in paragraph Nos. 4 to 7, which read as under:-

4. The decree holder had filed the suit against the judgment debtor for eviction and possession on the ground of bonafide requirements. Initially the suit was decreed in which the judgment debtor could not cross-examine the decree holder and his witnesses. The judgment debtor had preferred the appeal before Hon'ble District Judge, Nanded against the decree passed in original suit bearing RCS No. 1188/2012. The Hon'ble District Judge, Nanded has remanded the suit for giving opportunity. to the judgment debtor. Thereafter, also the judgment debtor did not cross-examine the decree holder and his witnesses. Therefore, the suit is again decreed. The judgment

debtor again preferred the appeal before Hon'ble District Judge, Nanded and prayed for remanding the suit. But, the Hon'ble District Judge, Nanded has dismissed the appeal. Thereafter, the judgment debtor preferred Civil Application bearing 148/2015 before the Hon'ble High Court and challenged the order of the Hon'ble District Judge, Nanded. The Hon'ble High Court has dismissed the said application. Thereafter, the judgment debtor has filed various applications in this execution petition.

5. It is contended by the judgment debtor that this Court has not passed any order in respect of the property bearing No. 1887, but the decree holder is trying to take possession of said property. The decree holder had filed the same application vide Exh. 72 in this execution petition and prayed for framing issue. The said application is rejected by this Court. The judgment debtor did not raise the ground in the written statement of the suit that he is in possession of the property bearing CTS No. 1887. Moreover, this court has passed the Judgment in respect of the property bearing CTS No. 1888 only. Therefore, if the judgment debtor is in possession of property bearing CTS No. 1887, he need to worry about it, because this court has not passed any decree in that respect.

6. It is admitted that the Judgment and Decree passed by this court in the suit is confirmed upto the Honble High Court. It appears that by filing the application, the judgment debtor is trying to challenge the order of Hon'ble High Court, before this Court, which is not legal. Moreover, the same contention was raised by the judgment debtor in the application (Exh. 72) which is rejected by this Court. The order passed by this Court on the application (Exh. 72) is not set aside by superior courts, yet.

7. It is contended by the judgment debtor that, the Judgment and the Decree is silent about the boundaries of the suit property. But, this court has passed the common order on the applications (Exhs. 10 and 15) and the objection raised by the judgment debtor in respect of boundaries is decided by this court. The said order is also not set aside by the Hon'ble Superior courts. It appears that the judgment debtor is trying to prolong execution petition by filing this and that application. It further appears that the judgment debtor is raising same objection in every application.....”

10. I have also gone through the copy of the cross-examination of the judgment debtor, wherein he has admitted the boundaries of the suit property. I find that the learned Appellate Court, while remanding the matter, has not recorded any reasons as to why it deemed it necessary to remand the case. Admittedly, once the decree passed by the learned

Trial Court has been confirmed up to this Court, the applicant–landlord is entitled to obtain possession of the suit property. The decree holder is entitled to execute the decree, and the judgment debtor appears to be creating hurdles in the execution proceedings. More particularly, while considering the application at Exhibit–63, the objection was rightly decided by the Executing Court. I therefore find that the learned Appellate Court, without recording any cogent reasons, allowed the appeal and remanded the matter. As a result, the applicant–landlord has been deprived of obtaining possession pursuant to the decree passed by the Trial Court. In view of the above, I am inclined to allow the Civil Revision Application.

11. In view thereof, the Civil Revision Application No.220/2018 is allowed. The order dated 28.08.2018 passed by the District Judge–3, Nanded, in Regular Civil Appeal No. 43/2018 is quashed and set aside.

12. In view that the Civil Revision Application No.220/2018 is allowed and the order passed by District Judge-3 Nanded, in Regular Civil Appeal is quashed, the Writ Petition Nos.3414/2018, 3787/2017 and 13143/2017 are dismissed.

13. Pending civil applications, if any, stand disposed of accordingly.

[SIDDHESHWAR S. THOMBRE, J.]