



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 14350 OF 2025

SHAIKH LATIF SHAIKH BASHEER

VERSUS

VINOD KHEMJI LODAYA

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Advocate for the Petitioner : Mr. Taher Ali Quadri, Mr. Vakil
Afzal Husain M.

Advocate for Respondent : Mr. Bhandari Anand P.

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CORAM : MANJUSHA A. DESHPANDE, J.

DATE : 29.08.2026

PER COURT :-

1. The petitioner is judgment debtor in Regular Darkhast No.9 of 2015 filed by the respondent herein. It is the contention of the petitioner that the original decree was passed in Regular Civil Suit No.693 of 1999 granting relief of possession and mesne profits against the petitioner vide judgment and order dated 06.04.2002. The respondent has filed Regular Darkhast No.52 of 2002 for execution of decree in RCS.No.693 of 1999. The objection filed by the petitioner below Exh.16 was rejected by order dated 20.08.2005 and the interim order was passed. The petitioner has filed Regular Civil Appeal No.281 of 2005 challenging the order of interim relief granted by the Executing Court. This appeal came to be dismissed vide order dated 14.11.2005. The petitioner has

filed MARJI No.353 of 2005 for condonation of delay in filing the appeal against judgment and decree dated 06.04.2002 in Regular civil Suit No.693 of 1999. The MARJI was dismissed by the Additional District Judge, Aurangabad on 16.02.2006. It is submitted that against the said judgment, the petitioner has preferred second appeal which is pending. It is submitted that on the basis of the judgment and decree dated 06.04.2002 passed in RCS.No.693 of 1999. The respondent herein i.e. decree holder filed Darkhast No.280 of 2002 which came to be dismissed for non-prosecution. Instead of filing an application for restoration or an appeal challenging the dismissal of Darkhast, the decree holder has again filed second application for execution being Regular Darkhast No.9 of 2015 after a period of 13 years from the date of passing of the order. The petitioner has filed application raising objection as regards the maintainability of the execution petition on 17.06.2025, on the ground that second execution petition is beyond the period of limitation of 12 years from the date of the decree dated 06.04.2002. Said application was opposed by the decree holder by filing his say. The learned Civil Judge Hunior Division, Aurangabad has been pleased to reject the application of the petitioner by passing an order dated 13.10.2025 below Exh.12.

This order passed by the Executing Court below Exh.12 is impugned in the present writ petition.

2. The learned advocate for the petitioner submits that the period of limitation prescribed under Section 136 of the Limitation Act and is twelve (12) years. Therefore, the period of limitation would start running from the date on which the decree was passed by the Trial Court on 06.04.2002. Hence, the application of the petitioner is beyond the period of limitation. He has assailed the said order on the ground that the learned Judge, while rejecting his application has observed that “normally the decree becomes executable from the day as soon as it passed. However, if there is an appeal the decree becomes executable after the appeal has been decided. Considering that the MARJI of the present petitioner was pending and it was decided by the Appellate Court on 16.02.2006. The period of limitation would start from the date on which the application in MARJI petition was dismissed on 16.02.2006.”

3. He would submit that, it is the settled position of law that the dismissal of an appeal does not amount to a decree and the period of limitation would begin from the date on which the suit was decreed. He would rely on the judgment

passed by this Court in case of ***Narayan Bhau Salve (deceased) and others Vs. Khandu Baburao Salve (deceased) and others.***

More particularly, on paragraph No.41 where this Court has observed that “in the case the order of dismissal of the appeals in default does not amount to a decree, and certainly the said order does not partake the character of an executable or enforceable order, into which the decree passed by the Trial Court would become enforceable on the date it was continued to be so, till the period of limitation expired. Thus, according to him, as in the present case also the appeal has been rejected by refusing to condone the delay, thus no decree has been passed and as such the period of limitation would begin from the date the decree is passed on 06.04.2002. Hence, the learned Judge has committed an error by allowing the application on the aforementioned grounds.

4. Learned advocate Mr. Bhandari has advanced his submissions on behalf of the sole respondent/decreed holder. He submits that although the learned Judge has held that the period of limitation would start from the day when MARJI No.353 of 2005 was dismissed. But the underlying reason is not correctly recorded by the learned Judge. He would submit that in fact the learned Judge has failed to record that there

was a previous execution Petition filed by the decree holder i.e. Regular Darkhast No.280 of 2000. The decree holder has filed Regular Darkhast No.280 of 2000, in which certain objections were raised by the judgment debtor which were turned down by the Executing Court, against which the judgment debtor has filed Appeal in which was beyond limitation. Thus, it was accompanied with MARJI No.353 of 2005 for condonation of delay. It is submitted that during the pendency of MARJI No.353 of 2005, there was an order of status-quo operating against the Decree Holder, which came to be decided on 16.02.2006. Thus, according to him, the decree was in executable till 16.02.2006. As such, the period of limitation would start from the day on which the status-quo was vacated as a result of rejection of MARJI No.353 of 2005. This fact about the order of status-quo has been lost sight by the learned Judge requires consideration. So far as the legal position that has been laid down in various decisions of this Court as well as the Supreme Court are not in dispute. The dismissal of appeal would not merge into the decree, if such appeal is dismissed for want of prosecution or on the ground of limitation meaning thereby when the Appeal is not decided on merits. Learned advocate for the respondent further submits that according to him Section 14 of the Limitation Act would be applicable to the

present case. After hearing the parties and after perusal of the impugned order, there appears substance in the contention of the learned advocate for the respondent/decreed holder. The learned Judge, has recorded findings about the maintainability of execution petition which reads thus :

“5. As per Article 136 of the Limitation Act limitation period was prescribed for 12 years for the execution of any decree or order of any civil Court. As per Article 136 of Limitation Act, the time from which begins when the decree or order becomes enforceable. And normally the decree becomes executable from the date as soon as it passed. And if there are appeals the decree typically becomes executable after the appeals have been heard and decided. Therefore, in present case the decree becomes executable after the decision of M.A.R.J.I. Petition. Therefore, the limitation period was started after the decision of M.A.R.J.I. Petition i.e. After 16.02.2006.”

5. These observations made by the learned Judge are admittedly run counter to the decision referred herein above in *Narayan Salve (supra)*. As referred supra, the fact about status-quo order was operating till MARJI was decided on 16.02.2006, has not at all been considered while computing the period of limitation by the learned Judge. Since this issue not considered, in my opinion, the order passed below Exh.12 suffers from non-application of mind, thus deserves to be

quashed and set aside. More particularly in view of the observations made in paragraph No.5 of the impugned order which run counter to the decision of the Hon'ble Supreme Court as well as the settled position of law. As a result of which, the order below Exh.12 deserves to be set aside. However, since the issue about date of starting point of limitation is not properly appreciated by the learned Judge. The parties are at liberty to file appropriate application before the Executing Court, raising the issues of appropriate date for counting period of limitation and to lead evidence in support thereof.

6. Till the decision in the application that would be filed by the present petitioner, the executing court shall not proceed to execute the decree in regular civil suit No.693 of 1999.

7. All issues, rights and contentions of the respective parties are kept open to be agitated in the application. The Writ Petition stands disposed of.

8. Parties to act upon an authenticated copy.

(MANJUSHA A. DESHPANDE, J.)

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vmk/-