



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10825 OF 2026
WITH
INTERIM APPLICATION NO.6535 OF 2026**

Amar Vijay Jadhav	...	Petitioner
versus		
Subarav Balaram Patil and Ors.	...	Respondents

Mr. Surel Shah, Sr. Advocate with Mr. Sunitha Nayak, for Petitioner.
Mr. Kamlesh Ghumre with Ms. Sonali Jadhav, for Respondent No.1.
Mr. Vishal Kanade with Mr. Digvijay Sarangdhar, Ms. Tanaya Patankar, for Respondent Nos.2 to 4.

CORAM: N.J.JAMADAR, J.

DATE : 24 AUGUST 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. This Petition calls in question the legality and propriety of the order dated 23 July 2026 passed by the Executing Court on an application preferred under Order XXI Rule 30 and 31 of the Code of Civil Procedure, 1908, whereby the Executing Court has appointed an Advocate – Commissioner to execute a decree and to do all acts, things and deeds including execution of required deeds and documents for and on behalf of judgment debtors, represent judgment debtors before all authorities, including LIC Housing Finance Ltd., for the purpose of transfer of the suit flat in the name of the decree holder and give effect to the decree in SCS No.480 of 2023 (SCS

No.162 of 2021).

3. Respondent No.1 instituted a suit against Respondent Nos.2 to 4 (Defendant Nos.1 to 3) and the Petitioner – Defendant No.4 for specific performance of the contract of sale of the suit flat. On 9 November 2023, a consent decree was passed in the said suit.

4. As the Defendants allegedly committed default in compliance with the consent decree, the Plaintiff gave a notice and upon failure of the Defendants to comply with the demand in the notice, instituted the execution proceedings.

5. The Petitioner (D4) instituted SCS No.50 of 2026 challenging the consent decree and sought diverse reliefs of declaration, cancellation and injunction. The Petitioner also filed an application seeking stay to the execution of the decree, in view of the pendency of the said suit.

6. Respondent No.1 – decree holder, filed an application purportedly under Order XXI Rule 30 and 31 seeking directions for execution of the consent decree. The said application was resisted by the judgment debtor.

7. By the impugned order, the learned Civil Judge repelled the objections and directed appointment of the Court Commissioner to do all the acts necessary for the execution of the instruments and transfer of the suit flat in favour of the Plaintiff in accordance with the terms of the consent decree.

8. Mr. Shah, learned Senior Advocate for the Petitioner, submitted that, while the application preferred by the Petitioner seeking stay to the execution

of the decree under the provisions of Order XXI Rule 26 awaited decision, the Executing Court could not have passed the impugned order appointing the Court Commissioner giving unbridled powers. The decree holder could not have invoked the provisions contained in Order XXI Rules 30 and 31 of the Code, as those provisions were not at all attracted in the facts of the case at hand. In any event, there was no privity of contract between the Plaintiff and Defendant No.4, and till the obligations to pay off the Defendant No.4 were not discharged, the decree could not have been executed qua Defendant No.4. Thus, the impugned order warrants interference. Reliance was placed by Mr. Shah on the judgment of the Supreme Court in the case of **Pawan Kumar Arya and Ors. V/s. Ravi Kumar Arya and Ors.**¹.

9. I have carefully considered the submissions canvassed by Mr. Shah, in the light of the material on record.

10. Relevant clauses of the Consent Terms read as under :

“2. It is agreed by and between the parties that the Defendant herein shall sale and transfer clear and marketable title of the suit property free from any encumbrances to and in favour of the Plaintiff herein for total lump sum consideration of Rs.1,80,00,000/- (Rupees One Crore Eighty Lakhs). The Defendants do hereby admit and acknowledge the receipt of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs) only towards part consideration of the said flat from the Plaintiff, and discharge the Plaintiff from the

1 (2020) 15 SCC 190

same (ledger extract of the same attached as Exhibit A).

3. It is agreed by and between the parties that the Plaintiff shall pay the consideration of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) on 09.11.2023 vide Cheque No.000142 A/c No.000501690212 with ICICI Bank to the Defendant No.1 and balance consideration of Rs.45,00,000/- (Rupees Forty Five Lakhs) at the time of execution and registration of Deed of Transfer and Assignment, which is agreed to be executed within two years from today.

4.....

5. It is agreed by and between the parties that the Agreement dated 31/03/2021 executed by the Defendant in favour of Mr. Amar Jadhav (Defendant No.4), which is registered in the office of Sub-Registrar Thane – 11 at Sr. No.5073/2021 shall be got cancelled by the Defendants herein by executing a Deed of Cancellation which shall be duly registered with the competent Sub-Registrar of Assurances. All the parties herein are aware that Mr. Amar Jadhav (Defendant No.4) has availed a loan towards purchase of the said flat from LIC Housing. After refund of entire consideration paid towards the said Flat to Mr. Amar Jadhav, he will obtain NOC from LIC Housing to cancel the said Agreement dated 31/03/2021. It is hereby agreed and clarified that entire responsibility of repayment of the amount, if any, received by the Defendants from Mr. Amar Jadhav (Defendant No.4) shall be that of the Defendants herein. It is further clarified that the Plaintiff herein shall not be held liable or responsible for the same in any manner whatsoever.”

11. Evidently, the parties had agreed that the Agreement dated 31 March 2021 executed by the co-Defendants in favour of Defendant No.4 should be cancelled by the Defendants by executing a Deed of Cancellation. Defendant No.4 was to obtain NOC from LIC Housing to cancel the said Agreement after refund of consideration to him. However, the entire responsibility of payment of the amount received by the co-Defendants to Defendant No.4 was to be that of the Defendants and the Plaintiff was not liable and responsible in any manner whatsoever.

12. The Executing Court has explicitly recorded that the Plaintiff paid further consideration of Rs.25 Lakhs as agreed, (in addition to the consideration of Rs.1,10,00,000/- which was duly acknowledged in the consent terms) and had shown willingness to pay the balance consideration as well. Thus, nothing more was to be done by the decree holder to perform his reciprocal promise.

13. With the aforesaid clarity on facts, if the submissions on behalf of the Petitioner are appraised, the institution of the separate suit i.e. SCS No.50 of 2026, to assail the legality and validity of the consent decree was in teeth of the provisions contained in Order XXIII Rule 3-A of the Code. In view of the decision of the Supreme Court in the case of **Triloki Nath Singh V/s. Anirudh Singh (deceased), through legal heirs and Ors.**², such a suit is

² AIR 2020 SC 2111

clearly barred by the provisions contained in Order XXIII Rule 3-A. Resultantly, the application under the provisions contained in Order XXI Rule 29 of the Code, premised on the pendency of the said suit was also misconceived. At any rate, it was not the case that the Defendant No.4 had succeeded in obtaining any relief in the said suit qua the decree which was put to execution.

14. Secondly, the objection to the execution of the decree premised on default in refund of the consideration allegedly paid by the Defendant No.4 to the other co-Defendants, also does not merit countenance as the parties had agreed that the liability to refund the consideration would be that of the Defendants only, and the Plaintiff shall not be liable for any default therein.

15. In regard to the recovery of the said amount, the consent decree may operate as a decree in favour of Defendant No.4 qua Defendant Nos.1 to 3. Defendant No.4 could legitimately enforce his remedies against Defendant Nos.1 to 3 on the basis of the stipulation in the consent terms, but Defendant No.4 has no right to resist the execution of the decree having expressly consented for the transfer of the suit flat in favour of the Plaintiff and cancellation of the agreement executed by Defendant Nos.1 to 3 in his favour.

16. The decision in the case of **Pawan Kumar Arya and Ors. (supra)**, has no application to the facts of the case at hand, as in that case the Supreme Court observed that both the parties to the consent terms / consent decree

are required to fully comply with the terms of settlement / the consent terms and the consent decree. One party cannot be permitted to say that portion of the settlement which is in their favour be executed and/or complied with and not the other terms of the settlement / consent terms / consent decree.

17. This is not the case at hand. As noted above, the Plaintiff has complied with his part of the agreement and, under the consent terms, the parties had explicitly agreed that the liability to refund the consideration parted with by Defendant No.4 would be that of rest of the Defendants only, and the Plaintiff was specifically insulated from the consequences of default in the refund for the said amount by the rest of the Defendants.

18. In the aforesaid view of the matter, the learned Civil Judge cannot be said to have committed any error in passing the impugned order.

19. Thus, the Writ Petition stands dismissed.

20. In view of the dismissal of the Writ Petition, Interim Application No.6535 of 2026 also stands disposed.

(N.J.JAMADAR, J.)