

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 598 OF 2015
WITH
CRIMINAL APPLICATION NO. 820 OF 2015

Bhanudas @ Bhanupratap s/o.
Honaji Gajbhiv and Ors.

....Applicants.

Versus

The State of Maharashtra & Anr. **....Respondents.**

Mr. S.B. Talekar, Advocate for applicants.

Mr. N.B. Patil, APP for State.

Mr. A.B. Kale, Advocate for assisting APP.

CORAM : T.V. NALAWADE, J.
DATED : 20th February, 2015.

ORDER :

1. The application is filed for bail. Both the sides are heard. Learned counsel Shri. A.B. Kale was allowed to assist the learned APP and the application filed for assisting the learned APP is disposed of accordingly.

2. It is a peculiar case showing the helplessness of even judicial system. The executing agency, Court is not doing its duties and even police machinery is not doing the needful and the decrees of Courts are remaining on paper. The crime is

registered on the basis of report given by Bailiff of Court and it is for the offence punishable under section 353 r/w. 34 of Indian Penal Code. Argument was advanced to give chequered history of the dispute and the tactics played by applicants and wife of applicant No. 1.

3. There is dispute between applicant No. 1 and the decree holder over the some immovable property. Regular Civil Suit No. 70/1991 was filed in the Court of Civil Judge, Junior Division, Shevgaon, District Ahmednagar for the relief of mandatory injunction and for possession. The decree holder had contended that encroachment was made by the applicants over his property and he had prayed for removal of encroachment over the said space. The suit came to be decreed on 18.12.2004. It appears that one case under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was then filed by present applicant No. 1 against the decree holder in the year 1991. The decree holder came to be acquitted on 1.9.2004.

4. Against the decision of Civil Judge, Junior Division, Shevgaon, R.C.A. No. 38/2005 was filed by applicant No. 1 and it came to be dismissed on 7.12.2005. Second Appeal bearing No.

203/2006 came to be filed in this Court against the said decision of R.C.A. and it also came to be dismissed on 16.12.2006. Then Special Leave to Appeal (Civil) No. 3784/2007 came to be filed against the decision of Second Appeal and it also came to be dismissed on 12.3.2007 and the decree became final.

5. The decree holder filed execution proceeding and order of possession warrant came to be made on 27.7.2011. To challenge that order, Writ Petition No. 5781/2011 was filed in this Court, but it came to be dismissed on 29.8.2011. Against that decision, L.P.A. No. 270/2011 was filed in this Court, but that also came to be dismissed on 29.9.2011. Then objection petition was filed, but it also came to be rejected by the Executing Court. The proceeding filed to challenge that order also came to be dismissed. The wife of the applicant No. 1 had also filed one objection petition in executing proceeding and it was also dismissed. R.C.A. No. 306/2013 filed against the said decision, came to be dismissed on 30.6.2014 and cost of Rs. 5000/- was imposed. The wife of applicant No. 1 then filed independent suit bearing Regular Civil Suit No. 351/2012 which was indirectly challenging the aforesaid decisions which had become final up to the Supreme Court. The said suit is still pending.

6. It appears that Writ Petition bearing No. 11617/2014 came to be filed in this Court directly by applicant No. 1. In the said writ petition undertaking was given by the present applicant No.1 to hand over the possession. Much was argued by the learned counsel for applicant No. 1 that the undertaking was conditional and measurements were to be taken and only after taking measurement, the encroachment could have been ascertained and then the possession could have been given. When there was the decree and the decree had become final, there was no question of entertaining any challenge to such decree. The undertaking can be looked at only from one angle that the judgment debtor had expressed that he was willingly handing over the possession, though he wanted to get it measured. Surprisingly, the learned counsel for applicant No. 1 submitted that it was up to the executing Court or for the decree holder to go for measurement. There is no such requirement in law. Suit itself cannot be entertained unless the property is specifically described. It can be said that the suit property was identified and the decree in respect of that property, which was identified, was given by the Civil Court. Thus, not much can be made out due to the wording used by the applicant No. 1 in the undertaking given by him. All these circumstances show that in the suit filed in the year 1991, even when the decree had

become final in the year 2007 (SLP was dismissed on 12.3.2007), the decree holder could not get the fruits of the decree. The aforesaid circumstances show that all kind of tactics are played by applicant No. 1 either directly by him or through his wife. Today one more circumstance is brought to the notice of this Court by the learned APP and this circumstance is mentioned in paragraph No. 7 by the learned Additional Sessions Judge, who rejected the application of applicants filed for bail. It is as under :-

"7. The Id. APP has further pointed out that the applicants/accused have kept statue of Dr. Babasaheb Ambedkar to create further obstruction in execution proceeding. According to Id. advocate Shri. Pradhan the applicants/accused have right to possess and keep the said statue in their house. However, this is not the issue before this Court."

7. The aforesaid circumstance again show that the applicants are ready to go to any extent and they are ready to create problems even for the entire society out of such civil dispute. There are ways and means for tackling such problems. There was discussion about the ways and means which are available for tackling such problems. The law and order problem is the problem of the Government and the Court is not expected to stay hands due to such problems. Everybody has to be very

stern to see that the orders made by the Courts are implemented and they are implemented immediately.

8. The Court Bailiff has made allegation that on 13.1.2015 when he went to execute the possession warrant in respect of the suit property, when he showed it to the applicants, they opposed him by saying that the space belongs to them. They were speaking loudly and even when the order was shown, the applicants did not obey the order and they obstructed the Bailiff in executing the warrant. The learned counsel for the applicants submitted that the act of the applicants does not fall under section 353 of I.P.C. This Court holds that this submission is not at all acceptable. The act itself constitutes the offence punishable under section 353 of I.P.C. if the definition of the term 'assault' etc. given in I.P.C. is considered. This conduct definitely amounts to obstruction to the public servant when he is discharging the duty. The decree has become final and objections of these persons are also decided finally. So, there was no question of raising such objection again.

9. The learned counsel for the applicants took this Court through some observations made by the Apex Court in the case reported as **(2014) 2 Supreme Court Cases 1 [Lalita**

Kumari Vs. Government of Uttar Pradesh and Ors.]. This case was altogether on different point like the necessity to register the crime when F.I.R. is received in respect of cognizable offence and also on the point whether it is compulsory for police to arrest persons involved in cognizable offence when the crime is registered against them.

10. The learned counsel for the applicants submitted that it was not possible for applicants to prevent the machinery from executing the warrant and they were not arrested then and there only. This submission is not acceptable at all. The submission was made that the Court Bailiff and the decree holder were acting in collusion. In view of the aforesaid circumstances, it can be said that on that day, it was necessary to execute the decree and indirectly the machinery has helped the judgment debtor.

11. When the crime of present nature is committed, there remains no alternative before police than to make arrest. The persons who are not obeying law, who have no regards for law, who are doing mischievous activities need to be arrested and that needs to be done in the interest of society at large. In view of the conduct of the applicants and the aforesaid

circumstances, this Court holds that at present, they cannot be released on bail. Not only applicants, but others also need to learn lesson from this case. Such conduct cannot be tolerated. It needs to be observed in the present case that on that day itself, it was necessary for the Court machinery and also for police to see that the encroachment was removed and possession was handed over. Police help is given only for that purpose. Only because few persons are interested in creating obstruction and they are creating such incidents, police or the executing machinery cannot stop discharging their duties. The work needs to be completed when obstruction comes from such persons. They are bound to create the problems. There is possibility that they may create problem for society and that too only to protect their selfish interest in respect of some property. In view of the facts and circumstances of the present case, this Court holds that it is not a fit case to grant the relief of bail atleast at this stage.

12. In the result, the application is rejected.

[T.V. NALAWADE, J.]

ssc/