

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

CIVIL REVISION APPLICATION NO. 101 OF 2013
WITH
CIVIL APPLICATION NO. 2639 OF 2014

Rajendra Kachrulal Sharma,
Age 53 years, Occu. Business,
R/o. Khandbara, Tal. Navapur,
Dist. Nandurbar.

....Petitioner.

Versus

Rajjanlal Ravishankar Sharma
Died, by alleged LRs.

1. Smt. Mithilesh Rajjanlal Sharma,
Age 57 years, Occu. Household,
2. Sushil Rajjanlal Sharma,
Age 28 years, Occu. Business,
3. Shri. Anil Rajjanlal Sharma,
Age 26 years, Occu. Business,
4. Shri. Sandip Rajjanlal Sharma,
Age 24 years, Occu. Household,

R.Nos. 1 to 4 are R/o. Khandbara,
Tal. Navapur, Dist. Nandurbar.

5. Smt. Manisha Amit Sharma,
Age 22 years, Occu. Household,
R/o. B Block 124/654, Govind Nagar,
Kanpur (Uttar Pradesh).
6. Smt. Shalini Hemant Sharma,
Age 20 years, Occu. Household,
R/o. Indore (MP)

....Respondents.

Mr. R.R. Mantri, Advocate for petitioner.

Mr. S.P. Wani h/f. Mr. A.G. Magare, Advocate for respondent Nos.
1 to 6.

CORAM : T.V. NALAWADE, J.
DATED : 7th December, 2015.

JUDGMENT :

1) The revision is filed to challenge the order made by the learned Civil Judge, Junior Division, Navapur, District Nandurbar on Exh. 15 in Regular Darkhast No. 4/2011. The application was moved by present respondents, legal heirs of decree holder to allow them to come on record and prosecute the matter. This application is allowed by the Executing Court. Both the sides are heard.

2) It appears that the property was owned by mother of decree holder, Rajjanlal. He had filed suit for eviction against the present petitioner under Rent Control Act in the year 1999. Objection to his locus was taken and that was decided against the tenant, present petitioner. That decision has become final.

3) The execution proceeding came to be filed in the year 2011 and the decree holder Rajjanlal, son of owner of the property, who was treated as landlord, died on 2.12.2012. The application by the legal heirs was made on 11.1.2013. The present respondents, legal heirs contended that they are the only legal heirs of the deceased Rajjanlal. The tenant, present

petitioner contended that the deceased has left behind brothers and sisters and they are necessary parties to the proceeding and so, permission cannot be given to present respondents to come on record as legal representatives and they cannot be allowed to prosecute the matter. Request was made to the Executing Court to conduct inquiry under the provisions of Order 22, Rule 5 of Civil Procedure Code by the present petitioner. The Executing Court has held that the application to come on record as legal heirs was moved in time, the present respondents are admittedly successors of Rajjanlal and as the names of other so called legal heirs are not mentioned by the tenant, there is no necessity of making such inquiry. With this observation, the application filed by the present respondents came to be allowed on 1.3.2013.

4) It appears that this Court granted stay to the aforesaid order in this proceeding and that indirectly stayed the execution proceeding itself. The learned counsel for present petitioner submitted that only because Rajjanlal was rent collector, he was allowed to prosecute the suit and after his death, all the heirs of owner of the property need to be joined to prosecute the matter. The parties are Hindus and Rajjanlal was not only the rent collector, but he was also son of the owner of

the property. It can be said that present respondents are representing the deceased Rajjanlal and also the mother of Rajjanlal, who is also dead. In view of these circumstances, this Court holds that they are entitled to prosecute the matter. It is clear that taking such objections is nothing but the tactics played by the present petitioner to see that execution of decree is delayed. By playing such tactics, he has succeeded in avoiding the execution for more than four years. The suit is of 1999. In view of these circumstances, this Court holds that there are no merits in the revision. There is no illegality or irregularity in the order made by the Executing Court.

5) In the result, the revision stands dismissed. Interim relief is vacated. Civil Application is disposed of.

6) The learned counsel for applicant requests for continuation of interim relief. The relief is refused as the decree was given in the year 2009 in suit of 1999 and the execution proceeding filed in the year 2011 could not make progress as due to tactics played by the tenant.

[T.V. NALAWADE, J.]

SSC/