

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9248 OF 2014

Khevji s/o Abaji Vayal
(Since deceased) through L.Rs

PETITIONERS

1. Appa s/o Khevji Vayal,
Age-36 years, Occ-Agriculture
2. Navabai Khevji Vayal,
Age-56 years, Occ - Agriculture

Both R/o Kolewadi, Taluka-Rahuri
District - Ahmednagar

VERSUS

Kapileshwar s/o Shankar Vayal
Age-62 years, Occ - Agriculture
R/o Kolewadi, Taluka - Rahuri,
District - Ahmednagar

RESPONDENT

.....
Mr. Rahul R. Karpe, Advocate for the petitioners
Mr. R. A. Tambe, Advocate for the respondent

.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 16th JUNE, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioners are aggrieved by grant of police aid to the respondent – decree holder by order on application Exhibit-19 in execution proceedings bearing Regular Darkhast No.58 of 2005, copy of which is annexed to this petition at Exhibit-D, page 30.

3. Contention of the petitioners is that the application is vague, sans any specific instance and does not contain any substance and yet the court has passed order allowing the same.

4. Learned advocate for the petitioners relies on "*Nirabai J. Patil V. Narayan D. Patil*" 2004 (3) Bom. C. R. 226.

5. Learned advocate for the respondent-decree holder however submits that the citation being relied upon on behalf of the petitioners may not hold field, for, that is with reference to proceedings which were against interim and temporary injunction orders. He submits that the respondent - decree holder is 78 years old and despite decree of 2005, he has not been able to enjoy fruits of the litigation, as the petitioners have been meddling and causing interference with cultivation of suit property. He relies on a judgment reported in *AIR 1995 Bombay 61* "*Ratnabai Narayanrao Naik & Another V. Satwarao Narayanrao Naik*". This appears to be a case wherein prayer for police aid had been made by decree holder in an application under Rule 77 and / or

under rule 98 of Order 21 of the Code of Civil Procedure. The court, in facts of that case, appears to have held that it is open for the parties to invoke the jurisdiction under section 151 of the Code of Civil Procedure for grant of police aid. The court had also observed that no doubt, that the police help is an extraordinary mode or procedure to implement execution of decree or orders and as such, it should not be recommended unless the court is fully convinced of the existence of a grave emergency and as such, it is incumbent for the decree holder praying for police help to state whether such help is required for violence / obstruction of the judgment debtor himself or at his instance by others or because of conditions of a general character such as, locality where execution will have to be effected being in a disturbed state, or a class of people similarly situated being likely to make a common cause with judgment debtor and resist execution.

6. Judgments relied upon on either side indicate that the inherent powers can be invoked by court and police authorities can be directed to give necessary aid for implementation and to enforce injunction when it is required because of apprehension of violence of judgment debtor himself or at his instance by other or because of the conditions of a general character such as

locality where execution will have to be effected being in a disturbed state, or a class of people similarly situated being likely to make a common cause with judgment debtor and resist execution.

7. Perusal of application Exhibit-19 filed by the respondent - decree holder for police aid however, neither specifies the requirements referred to herein above, nor the application makes reference to any specific instance or quotes any incident or any other particulars of disturbance or violation of the injunction. In view of the same, I consider that the application is missing particulars as may be required. Having regard to authorities cited, subsisting application may not call for invoking of powers under section 151 of the Civil Procedure Code. However, since it is being contended that the decree holder is 78 years old, I think it would be expedient and in the interest of justice that the decree holder may be given liberty to file proper application, afresh for the very same purpose for which the application Exhibit-19, (Exhibit-D page 30 to present petition) had been filed and court to decide on the same, after affording the parties opportunity of hearing in the matter.

8. In view of aforesaid, the impugned order dated 20th

September, 2014 passed by Civil Judge, Junior Division, Rahuri on application Exhibit-19 in Regular Darkhast No. 58 of 2005 stands set aside with liberty as referred to herein above. Rule is made absolute in aforesaid terms. If fresh application is filed by the decree holder in the execution proceedings, that should be considered as expeditiously as possible without getting bogged down by this order and this order shall not influence decision in such an application.

[SUNIL P. DESHMUKH, J.]

drp/wp9248-14