

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2162 OF 2015**

Nagarbai Tamanna Mhetre & Ors.

...Petitioners

vs.

Dayanand Anglo Vedic College Trust  
and Management Society

...Respondent

Mr. R. M. Haridas i/b. Tushar Sonawane for the Petitioners.

Mr. Vijay Killedar for the Respondent No.1.

**CORAM : R. M. SAVANT, J.**

**DATE : 3<sup>rd</sup> MARCH, 2015.**

PC. :-

The issuance of possession warrant against the Judgment Debtors by the order dated 24<sup>th</sup> February, 2015 passed by the Executing Court i.e. Civil Judge, Senior Division, Solapur, is taken exception to by way of the above Petition. The above Petition can be said to exemplify the attempt of the Judgment Debtors to some how to see to it that the decree in question is not executed. It appears that the Decree Holders are only interested in putting up obstruction to the execution of the decree. In the instant case, the decree has been passed as long back as in the year 1998 and the decree directs the Defendant Nos.1 to 11 to deliver the possession of the suit land bearing T.P. Scheme No.2, final plot No.96, as more specifically described in the plaint. The decree has been confirmed right upto the Apex Court. It seems that the Petitioners

have filed a Review Petition in the Apex Court which is pending, however, there is no order staying the execution of the decree.

2] The Decree Holder had filed the application in question being Regular Darkhast No.228/1998 for execution of the said decree. In the said Darkhast Proceedings, the instant application Exhibit 14 came to be filed by the Decree Holder for issuance of possession warrant. It seems that a pursis came to be filed by the Judgment Debtors on 24<sup>th</sup> February, 2015 in the said Execution Proceedings by which pursis it was sought to be placed on record that the Judgment Debtor No.7, 8, 9, 10 and 11 have expired. It is required to be noted that the Second Appeal filed by the Judgment Debtor was dismissed by a learned Single Judge of this Court by order dated 9<sup>th</sup> June, 2014. At the hearing of the said Second Appeal on behalf of the Appellants i.e. Judgment Debtors, an application was made by the learned advocate appearing for the Petitioners in the Judgment Debtors for continuation of the ad-interim order dated 13<sup>th</sup> August, 2002 for a period of 12 weeks. It was stated by the learned advocate for the Appellants that all the adult family members residing with them would file the usual undertaking in this Court incorporating therein that they are in possession of the suit land and nobody else is in possession, that they have neither created third party interests nor parted with possession, that they will hereafter

neither create third party interests for part with possession and that in case they are unable to obtain suitable orders from the Higher Court within 12 weeks from the said date, they would hand over vacant and peaceful possession of the suit land. It seems that inspite of said statement being accepted by the learned Single Judge of this Court, the undertaking was not filed as a consequence of which the Decree Holder has filed a Contempt Petition being Contempt Petition No.661/2014 in this Court. It appears that the Contempt Petition is not served on the contemnors and it is the case of the Decree Holder that the contemnors are deliberately avoiding service of the Contempt Petition. Be that as it may, in so far as the Second Appeal is concerned, being Second Appeal No.576/2002 by an order passed by a learned Single Judge of this Court on 20<sup>th</sup> January, 2011 the Appellants i.e. the Judgment Debtors were directed to file the applications to bring the heirs of the deceased Judgment Debtors on record within the time stipulated in the said order failing which the Second Appeal was to stand dismissed for non-prosecution without further reference to the Court. The learned counsel appearing for the Decree Holder i.e. Respondent No.1 herein states that Civil Applications were thereafter filed by the Appellants in the said Second Appeal which was allowed, however, inspite of the said Civil Applications being allowed, the heirs of the deceased Judgment Debtors were not brought on record.

3] Now coming to the Judgment Debtors who have expired as indicated above, the pursis was filed in respect of the Judgment Debtors No.7, 8, 9, 10 and 11 as having expired. In so far as the Judgment Debtor No.9 is concerned, it is the case of the Petitioners who are also the Judgment Debtor that the heirs of the Judgment Debtor No.9 are already record. In so far as the Judgment Debtor No.8 is concerned, he has expired in the year 2008. In so far as Judgment Debtor No.10 is concerned, he has expired on 5<sup>th</sup> November, 2005 and in so far the Judgment Debtors No.7 and 11 are concerned, it seems they have also expired during the pendency of the Second Appeal. However, as indicated above, no attempts were made inspite of the orders being passed to bring their heirs on record in the Second Appeal.

4] The instant Petition has not been filed by the heirs of the Judgment Debtors No.7,8, 9, 10 and 11 but has been filed by the other Judgment Debtors. As indicated above, it seems that attempt is being made to see to it that the Decree in question is not executed and that the Decree Holder does not get the fruits of the decree. Though Order 22 Rule 10 mandates that the heirs to be brought on record in an Execution Proceedings, the facts of the present case are such that the pursis has been filed by the other Judgment Debtors merely to see to it

that the execution proceedings are prolonged on the said ground. In my view, a Writ Court cannot countenance such type of applications. In that view of the matter, the impugned order does not warrant any interdiction at the hands of this Court in its writ jurisdiction under Article 227 of the Constitution of India. The Writ Petition is, accordingly, dismissed.

**(R. M. SAVANT, J.)**