

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 8 OF 2016

Bhimrao s/o Bhaginath Bahirav
& Anr.

..... APPLICANTS

V E R S U S

Pandurang s/o Nivruttirao Mone

..... RESPONDENT

.....

Mr. A.R.Vaidya, Advocate for Applicants.

Mr. A.L.Kanade, Advocate for Respondent.

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CORAM : T.V.NALAWADE, J.

DATE : 20th APRIL, 2016

ORAL ORDER :-

. The proceeding is filed to challenge the order made on Exh. 13 in R.D. No. 304/2014 which is pending before the Civil Judge [Jr. Division], Aurangabad. The said proceeding is filed by the present respondent for execution of decree given in his favour of injunction. By filing application at Exh. 13, objection was taken to the execution by present petitioner – Judgment Debtor that the proceeding was not filed within limitation. The executing Court has rejected the application by holding that the proceeding was filed within

limitation.

2. Learned counsel for the present petitioner submitted that in the Suit filed for relief of permanent injunction, interim relief was claimed seeking direction to remove the kiosk, structure of the applicant/defendant present on the suit property. It is contended that the said order was challenged by filing Misc. Civil Appeal and after dismissal of the said Appeal, the order had become final. He submitted that the time needs to be counted from the date of disposal of Misc. Civil Appeal and not from the date of the decision of Regular Appeal filed against the Judgment and decree of the Suit.

3. It appears that some interim prayer was made in the Suit and the said order was challenged by filing Misc. Civil Appeal No. 57/2009. The Suit was decided in favour of the plaintiff and this decision was challenged by filing regular Appeal which came to be decided on 25/10/2013. The execution proceeding came to be filed in the year 2014 within 3 years from the date of decision of the First Appeal. In view of the provision of Article 135 of the Limitation Act, the executing Court held that the proceeding is filed within limitation.

4. Learned counsel for the applicant placed reliance on some observations made by Allahabad High Court in the case reported as *AIR (ALL) – 1986-0-9 [Harihar Pandey Vs. Mangala Prasad Singh]*. On the basis of the observations made, it was submitted that if the relief of injunction is of 2

kinds, but the reliefs are separable, the entire decree becomes in-executable due to bar of limitation. The facts of the said case were totally different though the proposition may not be disputed. The relief claimed was also different. In the present matter, it can be said that the interim order merged into the decree given in the Suit and so this contention is not acceptable. It can be said that tactics are being played to protract the things, the removal of the kiosk.

5. In the result, the proceeding stands dismissed.

6. Learned counsel for the applicants prayed for continuation of interim relief granted by this Court. In view of the nature of case and nature of possession of the applicant which is illegal and as the applicant is benefited much already, this Court holds that further protection can not be given. Hence, such relief is also refused.

[T.V.NALAWADE, J.]