

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 1278 OF 2016**

The Chairman/President,  
Shri Saraswati Shiksha Prasarak  
Mandal and Ors

..Petitioners

Vs

Shri Bhimrao Kisan More and  
Anr.

.. Respondents

Mr. Ganesh Bhujbal, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.  
DATE : 04/02/2016

**PC:**

1. Heard Mr. Ganesh Bhujbal, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 20.3.2014 below Exh.17 and Judgment and order dated 9.12.2015 below Exh.19 in Spl. Darkhast no.42 of 2013 passed by the learned Civil Judge Sr. Dn., Kolhapur. By order dated 20.3.2014 below Exh.17, the learned trial Judge had issued warrant against recovery of amount mentioned in the application on the ground that the petitioners, hereafter referred to as judgment debtors, have not deposited or paid the amount to respondent no.1, hereinafter referred to as decree holder, and that judgment debtors are deliberately not complying the decree.

By order dated 18.8.2014 below Exh.19, initially the learned trial Judge directed that attachment warrant as per order below Exh.17 shall not be issued till such time the information sought for is received. By order dated 9.12.2015, the application Exhibit-19 made by the judgment debtors for recalling order dated 20.3.2014 is rejected.

3. Decree holder had instituted Appeal No.60 of 2008 before the School Tribunal, Kolhapur challenging termination dated 8.12.2005 which was to come into effect from 10.12.2005. Appeal was allowed by the Tribunal on 3.11.2011. It is not in dispute that the judgment debtors have challenged that order in this Court as also in the Apex Court unsuccessfully. Decree holder had instituted Writ Petition No.1281 of 2013 as he was given 25% back wages and was denied 75% back wages. That writ petition is admitted by this court by issuing rule and the same is pending.

4. Decree holder thereafter filed applications under sections 11 and 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 for implementation of the order passed by the Tribunal. By order dated 15.3.2015, the Tribunal partly allowed the application and directed the judgment debtors to reinstate decree holder on the post of Head Master forthwith. If they fail to comply the order within one week, Education Officer, Kolhapur was directed to ensure reinstatement

of decree holder. As far as back wages are concerned, decree holder was directed to submit the chart with pay unit and the concerned Pay unit was directed to verify and fix the amount of back wages as per clause no.5 of judgment in Appeal no.60 of 2008 within one month from the receipt of the details of back wages from decree holder. On verification and fixation of the said amount of back wages, judgment debtors were directed to pay within one month and on failure to implement the same, the concerned authority was directed to deduct the same from the non salary grant payable to judgment debtors, if any, among other directions.

5. It appears that the decree holder filed Darkhast on 17.12.2013. The judgment debtors filed reply dated 4.3.2014. During the pendency of Darkhast, decree holder filed application Exh.17 under Order XXI, Rule 54 on 20.3.2014 and sought attachment of property. By order dated 20.3.2014, the learned trial Judge issued Jangam warrant against judgment debtors for recovery of the amount mentioned in the application.

6. Judgment debtors filed application, Exh.19 under section 114 read with Section 151 and Order 47 for review of the order dated 20.3.2014. Initially, by order dated 18.8.2014 the learned trial Judge stayed issue of attachment warrant and called for information. By the subsequent order dated 9.12.2015, the

learned trial Judge rejected the application.

7. In support of this petition, Mr. Bhujwal submitted that in the application Exh.19, the judgment debtors specifically contended that though the decree holder was repeatedly called upon to resume duties, he did not resume duties. On the other hand, he has instituted writ petition in the High Court and the same is pending. Decree holder resumed duties on 19.11.2013 and since that date he is regularly paid salary. However, this contention is not dealt with in the order dated 18.8.2014 as also order dated 9.12.2015. That apart, while deciding the application Exh.19 on 9.12.2015, judgment debtors Advocate was also not present. He submitted that as these aspects are not considered the impugned orders are required to be interfered with.

8. As noted earlier, the order of the Tribunal is confirmed right upto the Apex Court. It appears that the judgment debtors have not paid salary as ordered by the Tribunal. Decree holder, therefore, filed application under Order XXI, Rule 54 for attachment of the property which was allowed on 20.3.2014. Judgment debtors have filed application Exh.19 under section 114 and 151 read with Order 47 of C.P.C. That application is rejected on 9.12.2015.

9. In the case of Kamlesh Verma Vs. Mayawati, AIR 2013 SC 3301, the Apex Court has considered the scope of review and has

observed thus:-

“The jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. “

10. Mr. Bhujbal submitted that though decree holder was repeatedly called upon to resume duties, he did not resume duties. It is not possible to accept this submission. In fact, as the judgment debtors did not implement the order of the School Tribunal, he filed applications under sections 11 and 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 for implementation of the order passed by the Tribunal. By order dated 15.3.2015, the Tribunal directed the Judgment debtors to reinstate the decree holder on the post of Head Master forthwith, failing which Education Officer, Kolhapur was directed to ensure reinstatement of the decree holder.

11. Mr. Bhujbal further submitted that before passing order on 9.12.2015, Advocate for judgment debtors was not present and

was not heard. It is also not possible to accept this submission. Perusal of paragraph 4 of that order clearly shows that both sides were heard at length.

12. After considering the order dated 20.3.2014 as also order dated 9.12.2015, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and is dismissed.

13. It is, however, made clear that in case judgment debtors so desire, can file Review Petition seeking review of the order dated 9.12.2015 on the ground that the contention raised in Exh.19 that despite writing several letters to the decree holder, he did not resume duties and that at the time of passing impugned order on 9.12.2015, their Advocate was not present, if so advised. If such application is made, the learned trial Judge will decide the said application uninfluenced by the observations made in the impugned order and in this order. Oder accordingly.

(R.G.KETKAR, J.)