

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

CIVIL REVISION APPLICATION NO.207 OF 2016

Shrimantraya Bhimraya
Shegaon

..Applicant

Vs

1. Smt. Lata Yashwantraya
Shegaon and Ors.

.. Respondents

Mr. Shrishail Sakhare, Advocate for Applicant.

**CORAM : R.G.KETKAR,J.
DATE : 06/04/2016**

PC:

1. Heard Mr.Shrishail Sakhare, learned counsel for the applicant at length.
2. By this Petition under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), the applicant has challenged order dated 17.2.2016 passed by learned Civil Judge, Senior Division, Solapur below Exhibit 11 in Special Darkhast no. 43 of 2015. By that order, the learned trial Judge issued Jangam warrant as prayed for by respondent no.1.
3. Respondents no.1 and 2 others instituted Special Darkhast No. 43 of 2015 in the Court of Civil Judge, Senior Division, Solapur on the ground that in Special Civil Suit No. 237 of 2011 they had filed application claiming maintenance. The applicant who is defendant no.1 was directed to pay Rs. 15,000/- per month as

interim maintenance from the date of filing of the application (30.7.2011) till final disposal of the main petition. Aggrieved by that decision, the applicant preferred Misc. Civil Application No. 14 of 2012 which was dismissed on 23.8.2013. As defendant no.1 did not comply the said order, Darkhast was instituted for recovery of Rs. 7,20,625/- and for issuing Jangam warrant.

4. The applicant filed reply opposing that application, inter alia, contending that as per section 38 and Order XXI, Rule 10 of C.P.C.. execution petition can be filed on the basis of decree and not on the basis of interim order. By the impugned order, the learned trial Judge has issued Jangam warrant.

5. Mr. Shrishail reiterated the submissions that were advanced before the trial Court. He submitted that Order XXI, Rule 10 provides for making application for execution of a decree and not interim order. The suit instituted by the respondents is still pending and as no decree is passed therein, Darkhast itself is not maintainable.

6. It is not possible to accept this submission. Section 2(2) and Section 2(14) defines expressions 'decree' and 'order' respectively. Section 36 reads thus:

“36. Application to orders.- The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order)”.

Section 141 reads thus:

“141. Miscellaneous proceedings- The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation - In this section, the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.”

7. Section 141 lays down that the procedure provided in C.P.C. in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. Explanation thereto lays down that the expression “proceedings” includes proceedings under Article 226 of Constitution of India. In view of Sections 36 and 141 of C.P.C., I do not find any merit in the submission of Mr Sakhare that as per Section 38 and Order XXI, Rule 10 of C.P.C. execution proceedings can be filed only on the basis of decree and not on the basis of interim order. It is also not in dispute that the order of maintenance has attained finality and that the applicant is in arrears of Rs. 7,20,625/- approximately. In view thereof, no case is made out for invocation of powers under Section 115 of C.P.C. Application fails and the same is dismissed.

(R.G.Ketkar, J.)