

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4325 OF 2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr.Ajay A. Joshi for the petitioner

CORAM : K. K. TATED, J.
DATE : APRIL 12, 2016

P.C.:

1 Heard the learned counsel for the petitioner.

2 This petition is preferred by original defendant judgment debtor challenging the order dated 7.1.2016 passed by Civil Judge, Junior Division Sangola below Exhibit-36 in Regular Darkhast No.4 of 2009 issuing possession warrant under Order XXI Rule 35 of the Code of Civil Procedure, 1908.

3 In the present proceedings, the respondent plaintiff filed Civil Suit bearing Regular Civil Suit No.158 of 1983 for possession of the suit premises bearing CTS.No.1028 and 1029 situated within the limits of the Municipal Corporation, Sangola District Solapur. That suit was decreed by the Trial Court on 16.6.1997. That decree was confirmed

upto Supreme Court. Thereafter the respondent plaintiff filed Regular Darkhast No.4 of 2009 and preferred application below Exhibit-36 for warrant of possession. Same was allowed by the Trial Court. Hence, the present Writ Petition.

4 The learned counsel for the petitioner judgment debtor submit that the order passed by Trial Court on 7.1.2016 below Exhibit-36 in Regular Darkhast No.4 of 2009 is against justice, equity and good conscious. He submits that the respondent plaintiff failed to join Mr.Naushad Badshah Maneri as respondent in Regular Darkhast. He submits that name of the said Naushad Badshah Maneri was added in Civil Appeal No.49 of 1997. Hence, the Regular Darkhast filed by the respondent plaintiff requires to be dismissed on the ground of non-joinder of necessary parties. He further submits that the petitioner filed reply to the Regular Darkhast No.4 of 2009 on 20.4.2015 denying the ownership of the suit premises of the respondent plaintiff. That point was also not considered by the executing court. Hence, the order passed by the executing court issuing the possession warrant is required to be set aside.

5 I have heard the learned counsel for the petitioner at length. It is to be noted that the

executing court cannot go beyond the decree passed by the Civil Court. What the executing court can do is pass appropriate order for executing the decree. In the present proceeding, the decree passed by Trial Court on 16.6.1997 in Regular Civil Suit No.158 of 1983 and was confirmed upto Supreme Court.

6 Considering these facts and the reason disclosed by the Trial Court in the impugned order, I do not find any reason to interfere with the well reasoned order. Hence Writ Petition stands rejected.

JUDGE