

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 229 OF 2016**

1. Nirmala Vilas Pawar and Anr. ..Applicants

Vs

1. Sharad Shankar Garge and
Ors. .. Respondents

Mr. S.K.Shinde i/b Tanaya D. Goswami, Advocate for Applicants.

CORAM : R.G.KETKAR,J.
DATE : 25/07/2016

PC:

1. Heard Mr. S.K.Shinde, learned counsel for the applicants at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants have challenged the Judgment and order dated 11.2.2016 passed by the learned 6th Jt. Civil Judge, Jr. Dn., Nashik below Exhibit-10 in Regular Civil Suit No.67 of 2014. By that order, the learned trial Judge rejected the application Exhibit 10 filed by judgment debtor for dismissing Darkhast on the ground that decree holders have no right to institute Darkhast as it is barred by law of limitation.

3. In support of this Application, Mr. Shinde submitted that by Judgments and decrees dated 31.3.2001, the learned 7th Jt. Civil Judge, Jr. Dn., Nashik dismissed Regular Civil Suits No.738 of 1997 and 34 of 1998 and decreed the counter claim set up by

the defendants. The plaintiffs were directed to hand over vacant possession of the suit property to defendants within 3 months. Aggrieved by that decision, the plaintiffs preferred Civil Appeals No.267 of 2001 and 268 of 2001 in District Court, Nashik. Pending these Appeals, the plaintiffs took out application Exh.5 for stay of the trial Court's decrees. By order dated 30.6.2001, the learned District Judge stayed execution of eviction decrees passed in the suits to the extent of handing over possession of the suit property to Sharad Shankar Garge subject to the petitioners furnishing security to the tune of Rs. One lac to the satisfaction of the lower court within one month from the date of the order and further the petitioners paying arrears of rent and existing rent of the suit property to the landlord on or before 5th day of every month until disposal of the Appeals.

4. Mr. Shinde submitted that both the conditions were not complied by the plaintiffs and the stay granted by the learned District Judge to eviction decrees stood vacated. The decrees became executable. He submitted that the defendants-decree holders filed Regular Darkhast no.67 of 2014 on or about 12.8.2014. He submitted that for noncompliance of order dated 30.6.2001, the decrees became executable and decree holders should have filed Darkhast within 12 years from July 2001. Admittedly, the decree holders filed Darkhast on 12.8.2014 and

on the face of it, it was clearly barred by limitation. He submitted that by the impugned order, the learned trial Judge rejected the application by observing that the Appeals preferred by the judgment debtors were dismissed on 13.1.2003 by the learned IInd Addl. District Judge, Nahsik. Second Appeals preferred by the judgment debtors were dismissed by this Court on 18.4.2007 and the decrees became executable after the decision of this Court. Darkhast filed on 12.8.2014 was, therefore, within limitation as per Article 136 of the Limitation Act. He submitted that the learned trial Judge should have held that the period of limitation prescribed under Article 136 viz. period of 12 years for execution of decree commences from the date when the decree becomes enforceable.

5. I have considered the submissions advanced by Mr. Shinde. I have also perused the material on record. As noted earlier, the suits instituted by the judgment debtor were dismissed and the counter claim set up by the defendants was decreed on 31.3.2001. It is not in dispute and is a matter of record that aggrieved by this decision, the judgment debtor preferred Civil Appeals No.267 of 2001 and 268 of 2001. Pending the Appeals, judgment debtor took out application Exh.5 for stay of the eviction decrees. On 30.6.2001, the learned District Judge granted stay to the extent of handing over vacant possession of

the suit property. The operative part of the order reads thus:

“The operation and execution of the impugned judgments and decrees passed in R.C.S. No.738/97 and 34/98 is hereby stayed to the extent of handing over vacant possession of the suit property to Sharad Garge on following conditions;-

(i) The appellants to furnish security to the tune of Rs.1,00,000/- to the satisfaction of the lower court within a month from this order.

(ii) The appellants to pay the arrears of rent, and existing rent of the suit property to the landlord on or before 5th day of every month until disposal of the appeal.

Inform lower court accordingly.”

6. Mr. Shidne submitted that the learned District Judge had granted stay to the extent of handing over vacant possession of the suit property. As the judgment debtors did not comply conditions (i), (ii), extracted herein above, the stay stood vacated and the decrees became enforceable after expiry of one month from 30.6.2001. It is not possible to accept this submission for more than one reason. In the first place, perusal of the order dated 30.6.2001, extracted herein above, does not indicate that failure to comply with these conditions will result in vacating the stay granted by the Appellate Court without further reference to the court. In other words, the order dated 30.6.2001 is not a self-operative order. Though the grant of stay was conditional, the order did not lay down consequences for failure to satisfy the conditions. Secondly, it is not in dispute and is rather a matter of

record that the Appeals were dismissed by the learned IInd Addl. District Judge on 13.1.2003. Aggrieved by dismissal of the Appeals, the judgment debtors preferred Second Appeals which were dismissed by this Court on 18.4.2007. In other words, the decrees passed by the trial Court had not attained finality and were subject to outcome of the Appeals as also out come of Second Appeals. Second Appeals were dismissed on 18.4.2007 and Darkhast is admittedly instituted on 12.8.2014. In view thereof, I do not find that the learned trial Judge committed any error in rejecting the application.

7. Mr. Shinde relied upon Article 136 which is to the following effect:

136	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring period, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.
-----	--	--------------	---

8. I have already held that the decree passed by the trial Court had attained finality only after dismissal of the Second Appeals. In other words, the decree was not enforceable and was subject to outcome of the Appeals in the District Court and

further outcome of Second Appeals in this Court. Hence, I do not find any merit in this Application. Accordingly, Application fails and same is dismissed.

(R.G.KETKAR, J.)