

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

BENCH AT AURANGABAD.

WRIT PETITION NO.1441 OF 2015

Ramrao S/o Gyanba Naybal ...Petitioner.

Versus

Bhaskar S/o Sukhdeorao
Naybal and others. ... Respondents.

...

Mr.B.S.Kudale, advocate for the petitioner.
Mr.T.G.Gaikwad, advocate for Respondent Nos.1 and
2.

...

CORAM : S.V.GANGAPURWALA, J.

Date : 15.12.2017.

PER COURT :

1. The suit filed by the plaintiff for injunction against the defendants/respondents is decreed. The plaintiff/petitioner filed an application seeking Police help for implementing the decree of injunction U/o XXI Rule 32 of the C.P.C. and that application is rejected. Aggrieved thereby, the present petition.

2. Mr.Kudale, learned counsel submits that the present Respondents had filed appeal against the decree passed in favour of the petitioner in RCS No.11/2007 bearing Appeal No.28/2010. The said appeal filed by the defendants is dismissed on 2.3.2017. The application for detaining the defendants in Civil prison is rejected on the ground that petitioner/plaintiff has to prove his possession beyond all reasonable doubt and has come to the conclusion that there is no disobedience of the decree of the Court. The said reasoning is incorrect.

3. Mr.Gaikwad, learned counsel for the defendants/judgment debtors submits that the decree in favour of the petitioner is an exparte decree. The nature of transaction is required to be considered.

4. I have gone through the reasoning given by the learned trial Judge while deciding the application/R.D.No.60/2008. The order is passed by the learned Judge on Exh.1.

5. Reading the order of the learned Judge, it is difficult to comprehend the reasons given by the learned Judge. The reasoning adopted by the learned trial Judge is against the cardinal and fundamental principles of Civil jurisprudence. The Executing Court is expected to execute the decree in the manner provided under the C.P.C. The Executing Court is bound by the decree passed and can not question the decree. The decree is for perpetual injunction restraining the defendants/judgment debtors from interfering in possession of the plaintiff. Subsequently, the said decree challenged by the defendants in appeal is confirmed. The appeal filed by the defendants having been dismissed on 2.3.2017, the Executing Court can not enter into the debate as to whether the plaintiff has proved his possession. When the decree is passed holding the petitioner to be in possession and restraining the defendants, the Executing Court had no other option but to execute the decree. The Executing Court was required to consider whether the judgment debtors have flouted the decree and obstructed the possession of the

decree holder. However, no finding is given on those lines.

6. In light of the above, the impugned order is quashed and set aside. The Executing Court shall reconsider the execution filed by the petitioner/decree holder, of-course after hearing the judgment debtors.

7. The Writ Petition is accordingly allowed. No costs.

(S . V . GANGAPURWALA, J .)

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