

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6395 OF 2013

Mrs. Vranda G. Pai .. Petitioner
vs.
Mr. Rajan Arjun Keni & Ors. .. Respondents

Mr. Rajesh Datar i/b. Ms Anjali Helekar for Petitioner.
Mr. G.S. Godbole i/b. Mr.Kunal Bhanage for Respondent No. 1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 05 October 2017

Date of Pronouncing the Judgment : 10 October 2017

JUDGMENT :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] On 5th October 2017, when this matter was finally heard, the following order was made :

“1] Mr. Godbole, learned counsel for the respondent states that the respondents-judgment debtors cannot remove the structure on the land, in respect of which, there is a decree for eviction. This statement is recorded. Necessity to record this statement arises from the fact that the respondents – judgment debtors have persuaded the appellate bench in the course of execution proceedings to remand the matter to the executing court to enable the judgment debtors to submit an appropriate proposal for removal of the structure, before, the decree in respect of eviction from the landed property can be effectively executed.

2] Heard. Reserved for orders.”

3] The petitioner, decree holder, challenges order dated 15th June 2013 made by the Division Bench of the Small Causes Court in revision application no. 52 of 2013 (impugned order). The Division Bench of the Small Causes Court, by the impugned order, has set aside the order dated 6th May 2013 made by Small Causes Court (executing court) in the context of execution of decree dated 2nd December 2006, directing the respondents i.e. judgment debtors to restore vacant possession of property admeasuring 44 sq. yards out of Hissa No. 422 (suit property) belonging to the decree holder.

4] Mr. Datar, learned counsel for the petitioner – decree holder submits that the decree dated 2nd December 2006 has attained finality right upto the Hon'ble Supreme Court. The objection raised by the judgment debtors to the execution of the decree on the ground that the suit property was not properly identified, has been dismissed by the executing court on 19th March 2013. The order dated 19th March 2013 has attained finality, for want of challenge or variation. The judgment debtors have inducted some of their relatives in the structure put up by the judgment debtors on the suit property and the judgment debtors are resisting the execution of the decree, through such occupants. Mr. Datar submits that in that regard, obstructionists proceedings are already pending. The executing court, by order dated 6th May 2013 directed issue of

possession warrant. The Division Bench of the Small Causes Court, by accepting the dishonest and spacious plea on behalf of the judgment debtors that under section 108(h) of the Transfer of Property Act, 1882 (TP Act) the lessee has a right to remove all things which he has attached to the earth, provided, he leaves the property in the state in which he received it, has set aside the executing court's order dated 6th May 2003 and remanded the matter to the executing court for fresh decision. Mr. Datar submits that the plea based upon section 108(h) of the TP Act, apart from being dishonest was clearly barred by principles of *res judicata* or a constructive *res judicata* which apply even to execution proceedings. Mr. Datar submits that the judgment debtors, by means which are more foul than fair, are bent upon ensuring that the decree holders do not obtain the fruits of the decree dated 2nd December 2006, which has attained finality right upto to the level of the Supreme Court. Mr. Datar relies upon ***Satyawati vs. Rajinder Singh & Anr.***¹, to submit that the Court ought to assist the decree holder to obtain the fruits of the decree and desist from lending any assistance to the judgment debtors, who are prone to take false and frivolous pleas with the only purpose of delaying executing proceedings.

5] Mr. Godbole, learned counsel for the respondents submits

1 (2013) 9 SCC 491

that in this case, admittedly, the decree is only in respect of the land admeasuring 44 sq. yards and not in respect of the structure erected by the judgment debtors thereon. He submits that some of the obstructionists, who may be obstructing the execution of the decree, bear the same surname as that of the judgment debtors, however, they are not the relatives of the judgment debtors and they appear to have some independent claim in the portion of the structures, which they occupy. Mr. Godbole submits that unless, the rights of such obstructionists are determined, there is no question of the execution, proceeding any further.

6] Mr. Godbole submits that in this case the provisions of section 108 of the TP Act are clearly attracted. In terms of sub clause (h) of section 108 of the TP Act, lessee may, even after the determination of the lease, remove at any time, whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it. Mr. Godbole submits that such an opportunity is required to be afforded to the judgment debtors and since, such an opportunity was never afforded to the judgment debtors, the Division Bench of the Small Causes Court, in the exercise of its revisional jurisdiction, has rightly set aside the executing court's order dated 6th May 2013 issuing possession warrant.

7] Mr. Godbole submits that though, the final directions in the impugned order dated 15th June 2013 are in favour of the judgment debtors, the Division Bench of the Small Causes Court, has erred in rejecting the judgment debtors contention (as recorded in paragraph 18 of the impugned order) that in the facts of the present case, only symbolic possession of the suit property could have been granted by the executing court to the decree holder. Mr. Godbole submits that unless and until the rights of the obstructionists, who occupy certain portions of the structure on the suit property are determined, there is no question of issuing any possession warrant, particularly, since the decree relates only to land and not the structure or any portion of the structure. Mr. Godbole submits that even though, the judgment debtors may not have instituted any proceedings to challenge the impugned order dated 15th June 2013 because the final directions therein support the judgment debtors, the judgment debtors are entitled to question the finding / observation in paragraph 18 of the impugned order, to the extent, this observation /finding rejects the contention raised by the Advocate for the judgment debtors.

8] Mr. Godbole submits that the impugned order is fair and proportionate since, the same, will avoid multiplicity of proceedings.

He submits that no proper opportunity of hearing was afforded to the judgment debtors before the order dated 6th May 2013 was made. The issue of in-executability of the decree, particularly because the suit property has not been properly described, had not been considered by the executing court before making the order dated 6th May 2013, which order, the Division Bench of the Small Causes Court has rightly set aside by making the impugned order.

9] For all the aforesaid reasons, Mr. Godbole submits that there is no legal infirmity whatsoever in the impugned order dated 15th June 2013 made by the Division Bench of the Small Causes Court and therefore, this petition may be dismissed. Mr. Godbole points out that the impugned order remanded the proceedings to the executing court and therefore, there is no real prejudice to the decree holder. He submits that this is yet another reason why this Court should not interfere with the impugned order in the exercise of its writ jurisdiction.

10] The rival contentions now fall for determination.

11] In this case, T.E. & R. Suit No. 54/64 of 2003 was partly decreed on 2nd December 2006 in the following terms :

“ *It is ordered that, Suit is partly decreed.
The defendants are hereby directed to hand over quit,*

vacant and peaceful possession of the suit land viz. 44 sq. yards on CTS No. 422 situated at Bhandarwada, Malad (West), Mumbai - 400064 by 31st March, 2007.

Decree in respect of encroached land of 120 sq. yards is refused.

In the facts and circumstances of the present case, there is no order as to costs."

12] As against the decree dated 2nd December 2006, the defendants to the suit i.e. the judgment debtors instituted an appeal, which came to be dismissed by the Division Bench of the Small Causes Court. The judgment debtors thereafter instituted a civil revision revision no. 732 of 2011 before this Court, which came to be dismissed by a detailed judgment and order dated 1st December 2011. The special leave petition against the order dated 1st December 2011 was also dismissed by the Hon'ble Supreme Court. Thus, the decree dated 2nd December 2006 has attained finality.

13] If the judgment and order dated 1st December 2011 made by this Court dismissing the judgment debtors civil revision application no. 732 of 2011 is perused, it does appear that all possible contentions, both, to the validity as well as the possible in-executability of the decree made were raised by the judgment debtors and such objections, have been duly considered and rejected. In particular, objections were raised on the basis of the structure which the judgment debtors have put up on the suit

property. Objections were also raised about identification of the suit property. Such objections have been considered in details and thereafter, rejected. This Court, observed that there was no case made out to interfere with the concurrent decrees made by the courts below. As noted earlier, even the special leave petition against the order dated 1st December 2011 has since been dismissed by the Hon'ble Supreme Court.

14] When the decree was put into execution, the same was resisted by the Judgment debtors, again, by contending that the decree is in-executable, since, the decree holder has not given proper description of the suit property, which, consequently, cannot be properly identified. Subhash Shankar Keni, Arun Shankar Keni and Ramkrishnan Aruna Salam claiming to be occupants of the structures put up by the judgment debtors on the suit property also obstructed to the execution of the decree by claiming certain independent rights. Mr. Datar contends that all these persons have been put up by the judgment debtors, with the sole object of obstructing the execution of the decree and thereby, continuing to retain possession of the suit property, even though, the decree for restoration of possession to the decree holder has attained finality right up to the Apex Court. In these proceedings, it will not be appropriate to make observations as regards the status of such

obstructionists, since, proceedings in this regard, are pending before the executing court.

15] The executing court, by a fairly detailed order dated 19th March 2013 rejected the judgment debtors objections to execution of the decree. As against the order dated 19th March 2013, the judgment debtors have not taken out further proceedings and therefore, the order dated 19th March 2013 stands. Even otherwise, the order dated 19th March 2013 is perfectly legal and valid since, therein, the executing court has observed that the very objections to the alleged in-executability of the decree for want of proper description or identification were considered by this Court in its order dated 1st December 2011 and such objections were rejected. The executing court has rightly observed that it was impermissible for the judgment debtors to repeatedly raise such objections and delay the execution of the decree.

16] On 10th April 2013, the Bailiff, submitted a report explaining the difficulties in the execution of the decree. Mr. Godbole, attempted to place reliance on the Bailiff's report, in support of his contention that the decree is in-executable. At this stage, no comments are necessary on the Bailiff's report, in so far as the occupation of Subhash Shankar Keni, Arun Shankar Keni and

Ramkrishnan Aruna Salam are concerned. However, the Bailiff, was duty bound to execute the decree to the extent directed by the executing court qua the judgment debtors. The explanation furnished by the Bailiff in his report, is far from satisfactory and in fact, this is a fit case where the executing court, ought to have pulled up the Bailiff. However, since, this was a situation in the year 2013, there is no point in taking the issue any further. The decree holder once again applied for execution. However, the executing court, impressed by the Bailiff's report, refused to issue a writ of possession. The decree holder, thereupon, was constrained to file a detailed application pointing out that there was absolutely no impediment to the execution of decree as against the judgment debtors. It is on this application that the executing court made its order dated 6th May 2013, which has now been upset by the impugned order by the Division Bench of the Small Causes Court in the exercise of its revisional jurisdiction.

17] The operative portion of the executing court's order dated 6th May 2013, reads thus :

"ORDER

Application is allowed.

Issue possession warrant against the defendants, their family members or any third person/s in respect of ground floor middle room and entire first floor of the pucca structure situated on suit premises viz. 44 sq. yds, on CTS No. 422,

situated at Bhandarwada, Malad (W), Mumbai 400 064.

Mr. S. K. Phadatare, Bailiff of this court is appointed to execute warrant of possession.

Senior Inspector of Police, Malad (West) Police Station to provide police assistance to bailiff at the time of execution of warrant of possession at the costs of the plaintiff.

The plaintiff shall not execute warrant of possession against Mr. Subhash Shankar Keni, Mr. Arun Shankar Keni and Mr. Ramkrishna Aruna Salam under the garb of police aid in respect of the premises in their respective possession."

18] The Division Bench of the Small Causes Court, by the impugned order dated 15th June 2013 has upset the executing court's order dated 6th May 2013, broadly on two grounds :-

(a) That the judgment debtors were not given sufficient opportunity to deal with the decree holders application dated 6th May 2003 upon which, the executing court, made its order dated 6th May 2003. This means that the judgment debtors were not given opportunity to issues regards in-executability of the decree on account of the structure put up on the suit property by them;

(b) That the judgment debtors were deprived of opportunity as is contemplated by section 108(h) of the TP Act to remove all things which the judgment debtors may have attached to the earth. In the present context, this means to remove structure which the judgment debtors have put up on the suit property, which, in terms of the decree, the

judgment debtors are required to restore to the decree holder.

19] In the context of the second reason stated by the Division Bench of the Small Causes Court in the impugned order, a query was posed to the learned counsel appearing for the judgment debtors as to whether the judgment debtors were agreeable to dismantle and remove the structure put up on the suit property by them and if so, the approximate time schedule within which such an exercise would be completed. Mr. Godbole, learned counsel for the judgment debtors applied for a short adjournment to elicit response from the judgment debtors, which adjournment was granted and the matter was posted on 5th October 2017. On 5th October 2017, Mr. Godbole responded and such response is transcribed in the order dated 5th October, 2017, as noted earlier. In short, the judgment debtors, after having persuaded the Division Bench of the Small Causes Court to remand the matter to the executing court for exercise of alleged rights available to them under section 108 of the TP Act, have, now, made a 'U' turn and expressed helplessness in the matter of removal of the structure and the restoration of the suit property to its original state. In such circumstances, Mr. Datar is entirely justified in contending that the plea raised by the judgment debtors was totally a *mala fide* and

dishonest plea with the sole objective of frustrating the execution process and ensuring that the decree holder does not obtain the fruits of the decree dated 2nd December 2006 notwithstanding the circumstance that the decree has attained finality right up to the stage of the Hon'ble Supreme Court.

20] The plea that there was lack of opportunity to the judgment debtors is also entirely misplaced. This is a case where more than ample opportunities have been granted to the judgment debtors even though, the record indicates that the judgment debtors are bent upon abusing the judicial process by repeatedly raising objections, which have already been rejected over and over again.

21] The Full Bench of the Patna High Court in the case of **Bajinath Prasad Sahni vs. Ramphal Sahni² and Ramrup Rai vs. Gheodhari Kuer³** have held that the principles of constructive *res judicata* apply to execution proceedings as well. The proposition is summarised in the following terms:-

“7.....the principle of constructive res judicata applies to an execution proceeding also. It was laid down in that decision that there are five important stages in an execution proceeding of a money decree, namely, (1) issue of notice under Order 21, Rule 22, (2) the order for issue of attachment, (3) order for sale of the property, (4) sale of the property, and (5) confirmation of the sale.

It was held that if in spite of service of notice, the judgment

2 AIR 1962 Patna 72

3 AIR 1980 Patna 197

debtor fails to raise an objection which he might and ought to have raised at that stage, for instance, an objection on the ground of limitation, the court in passing the order for execution of the decree must be deemed to have decided the objection against him. It was further observed that ordinarily the court does not pass an express order to the effect that the decree be executed. That order is implied in the order for the issue of attachment. All objections, therefore, to the executability of the decree have to be raised in such cases before the order for issue of attachment. Similarly, when the court orders sale of the judgment-debtor's property at the third stage of the proceeding under Rule 64 of Order 21, any objection on the ground of non-saleability of the property must be raised before that stage and in case the judgment-debtor fails to raise any such question at that stage, the court must be deemed to have decided it against him by passing an order for sale of the property, because, unless the property is liable to sale the court cannot pass that order. We are, however, not concerned in this case with the subsequent stages as the principle of *res judicata* is sought to be applied on the basis of what happened at the earlier stage of the execution proceeding. On the facts and in the circumstances mentioned above, I would accept the contention of the learned counsel for the appellant and as also observed by the Full Bench, an order under Rule 23 may be implied by passing of the subsequent order in the execution proceeding after the service return of the notice under Rule 22. In my view, the order of the executing court dated 12-5-1972 directing the decree holder to deposit the travelling allowance of the Nazir and to file processes for effecting delivery of possession would amount to an order under Rule 23 for executing the decree. No objection, therefore, having been filed to the executability of the decree before that order, the objection filed subsequent thereto must be deemed to be barred by the principle of constructive *res judicata*. The order of the courts below, therefore, to the maintainability of the execution case must also be upheld on this ground as well."

22] In **Mohanlal Goenka vs. Benoy Kishna**⁴, the Apex Court, has also accepted the position that principles of *res judicata* or constructive *res judicata* apply to execution proceedings. The relevant observations read as follows:

4 AIR 1953 SC 65

“19. The foregoing narrative of the various stages through which the execution proceedings passed from time to time will show that neither at the time when the execution application was made -and a notice served upon the judgment-debtor, nor in the applications for setting aside the two sales made by him did the judgment-debtor raise any objection to execution being proceeded with on the ground that the execution Court had no jurisdiction to execute the decree. The failure to raise such an objection which went to the root of the matter precludes him from raising the plea of jurisdiction on the principle of constructive res judicata after the property has been sold to the auction-purchaser who has entered into possession. There ate two occasions on which the judgment- debtor raised the question of, jurisdiction for the first time. He did not, however, press it with the result that the objection must be taken to have been impliedly overruled. One such occasion was when the property was sold for the second time and was purchased by the decree-holder for Rs. 20,000.

In para 19 of his application dated July 7, 1 933 (Exhibit E) to set aside the sale he challenged the jurisdiction of the Court, but the order of the Court dated the 29th January, 1934, does not show that the plea was persisted in. The second occasion was when the property was sold for the third time and in his application (Exhibit E.4) dated June 27, 1938, for setting aside the sale he raised the question in paragraph 20. The objection application was dismissed but there is no trace of the judgment-debtor having pressed this objection. When he preferred an appeal to the High Court, he did not make the plea of jurisdiction a ground of attack against the execution of the decree and the appeal was dismissed on other points. Finally he filed a review application and in paragraphs 11, 12 and 13 he raised the objection to execution in more elaborate words, but the application was rejected by -the High Court on the ground that such an objection did not fall within the purview of Order XXI, rule 90, [of the Code](#) of Civil Procedure This order therefore became final. The judgment debtor admitted that the two applications (Exhibits E and E. 4) were prepared according to his instructions. It is not possible therefore for the judgment debtor to escape the effect of the above orders which became binding upon him.”

23] To the same effect, are the observations of the Supreme Court in ***Barkat Ali vs. Badrinarain***⁵.

24] The judgment debtors, in the circumstances, were disentitled to keep on raising the same objections over and over again, with the sole objective of frustrating the execution of the decree which has attained finality right up to the stage of the Hon'ble Supreme Court. Such conduct on the part of the judgment debtors clearly constitutes abuse of the judicial process.

25] The judgment debtors, who claim that the occupants of some portion of the structure put up by the judgment debtors on the suit property have independent claims, cannot, be permitted to take up cudgels on behalf of such obstructionists, if indeed, such obstructionists have some independent claim and are not merely fronts for the judgment debtors. The proceedings against such obstructionists are pending and even the order dated 6th May 2013 made by the executing court, had very clearly directed that warrant of possession shall not be executed against the said obstructionists, until the disposal of the proceedings against the said obstructionists. The judgment debtors, certainly, cannot, on one hand claim that he has no truck with such obstructionists save and except fortuitous circumstance that they bear the same surname

5 (2008) 4 SCC 615

and thereafter, seek to frustrate the execution of the decree which has attained finality right up to the stage of the Hon'ble Supreme Court by taking shelter behind such so-called independent obstructionists. This is again, an instance of abuse of process by the judgment debtors, to which, unfortunately, the Division Bench of the Small causes Court fell prey.

26] The impugned order made by the Division Bench of the Small Causes Court is unsustainable both on law as well as on facts. The Division Bench, at the highest, should have inquired with the judgment debtors whether the judgment debtors were seriously interested in removing the suit structure put up by them on the suit property and if so, within what time. Upon remand, it now transpires that the judgment debtors are unwilling to or claim to be not in a position to remove the structure. If this be so, no purpose of remand would be served except perhaps, to prolong the execution of the decree for some indefinite duration. This is a case where ample opportunities were granted to the judgment debtors. There is nothing like technical breach of principles of natural justice. Opportunity to respond, though, the normal rule must not be reduced to some mere ritual or formality. In this case, apart from once again repeating that the decree is in-executable or that the suit property is not properly identifiable, the judgment debtors had no

further objections to raise. As noted earlier, the very objections have been rejected time and again. To afford the judgment debtors yet another opportunity to raise the very same objections, does not amount to compliance with natural justice rather, this constitutes some unnatural expansion of the principles of natural justice. Since, the Division Bench of the Small Causes Court has failed to appreciate the matter from this perspective, impugned order is liable to be set aside.

27] The Division Bench of the Small Causes Court has also failed to take note of the dictum of the Hon'ble Supreme Court in case of **Satyawati vs. Rajinder Singh & Anr.**⁶ This is what the Supreme Court observed in paragraphs 12 to 18 :

“12. It is really agonising to learn that the appellant-decree-holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January 1996. As stated hereinabove, the Privy Council in General Manager of the Raj Durbhunga v. Coomar Ramaput Sing had observed that the difficulties of a litigant in India begin when he has obtained a decree. Even in 1925, while quoting the aforesaid judgment of the Privy Council in Kuer Jang Bahadur v. Bank of Upper India Ltd.³ the Court was constrained to observe that: (AIR p. 448)

“Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.”

13. In spite of the aforesaid observation made in 1925, this Court was again constrained to observe in Babu Lal v. Hazari

6 (2013) 9 SCC 491

Lal Kishori Lal- in para 29 that: (SCC p. 539)

“29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections.”

14. This Court, again in Marshall Sons & Co. (I) Ltd. v. Sahi Oretrans (P) Ltd. was constrained to observe in para 4 of the said judgment that: (SCC p. 326)

“4. ... it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and, on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and a person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time.”

15. Once again in Shub Karan Bubna v. Sita Saran Bubna at para 27 this Court observed as under: (SCC p. 699)

“27. In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.”

16. As stated by us hereinabove, the position has not been

improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

17. We are sure that the executing court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice.

18. The appeal is allowed with no order as to costs.

28] In **Mehmood Ahmed Siddiqui vs. Nawab and ors.**⁷, the Supreme Court, upon noticing that decree for eviction made in the year 1988 remained un-executed for more than 9 years, as, the same was not allowed by the judgment-debtor to be executed for one ground or the other. The following order was made :

“3. Heard learned counsel for the petitioner.

4. We do not find any ground to interfere with the impugned order.

5. As the suit for recovery of possession of the property in question was filed in the year 1995 in which ex parte decree was passed in the year 1998 and more than nine years have expired from that date, but on one ground or the other, decree has not been allowed to be executed, we hereby direct the executing court to see that the vacant possession of the subject of dispute is delivered to the decree-holders within a period of one month from the date of receipt/production of copy of this order. In case for delivery of possession any armed force is necessary, the executing court shall requisition the same from the Superintendent of Police concerned, who shall depute it within forty-eight hours from the date the requisition is received by him. It is further directed that if any person other than the judgment -debtor is found in possession he shall be also dispossessed by the armed force.

⁷ (2007) 14 SCC 304

6. *The special leave petition is, accordingly, disposed of.*

7. *Let copy of this order be sent to the executing court by fax as well, who shall immediately report after compliance to this Court by fax as well."*

29] In this case, there is yet another aspect which needs to be referred to. The decree of eviction made by the Small Causes Court on 2nd December 2006 was affirmed by appeal court some time in 2011. This Court, by judgment and order dated 1st December 2011, after considering the matter in details, dismissed the judgment debtors petition. It is pertinent to note that this Court, in its judgment and order dated 1st December 2011, also considered and rejected the judgment debtors objections to the inexecutability of the decree made, since, the judgment debtors, chose to raise such objections at that stage itself. The judgment debtors then instituted special leave petition (civil) no. 6870 of 2012 to impugn the judgment and order dated 1st December 2012 made by this Court. This special leave petition was dismissed by the Hon'ble Supreme Court by making the following order:-

" We have heard learned counsel for the petitioners and perused the relevant material.

Delay condoned.

We do not find any valid and legal ground for interference. The special leave petition is dismissed. However, the petitioners are granted time up to 31st August, 2012 to vacate the suit premises subject to their filing an usual undertaking within a period of two weeks from today."

30] This means that after dismissal of special leave petition, the judgment debtors, obtained additional time of four months to vacate the suit premises, subject to filing undertaking in usual terms. However, the judgment debtors, never filed any such undertaking and have succeeded in resisting the execution for over five years since the date of the order made by the Hon'ble Supreme Court on 23rd April 2012. In fact, the judgment debtors, by raising repeatedly some or similar objections, have succeeded in stalling the execution proceedings for almost eleven years from the date of the decree dated 2nd December 2006, This is quite clear case of abuse of the judicial process.

31] Mr. Godbole however submits that the Hon'ble Supreme Court refused to entertain any contempt petition against the judgment debtors for failure to file undertaking. Mr. Godbole submits that in execution proceedings, the judgment debtors were entitled to, and therefore, have taken objections available under law. In this case, as noticed earlier, most of the objections raised by the judgment debtors were frivolous, repetitive and barred by *res judicata* or constructive *res judicata*.

32] In **Santanu Chaudhuri vs. Subir Ghosh**⁸, the Hon'ble Supreme Court, made reference to **Ram Pyari vs. Jagdish Lal**⁹, **Firm Ganpat Ram Rajkumar vs. Kalu Ram**¹⁰ and **Zahurul Islam vs. Abdul Kalam**¹¹. In these cases, the Hon'ble Supreme Court held that even though, there may not be contempt, since no undertaking was at all filed, direction was liable to issue to the executing court to cause delivery of vacant possession, if necessary, with police help. In *Zahurul Islam* (supra), the Hon'ble Supreme Court held that where time was granted to tenant to vacate the disputed premises subject to filing his usual undertaking within four weeks, but the tenant did not file any undertaking nor vacated the premises, it was for the Court to ensure compliance with the order by ensuring delivery of possession to the landlord. After digesting these decisions, the Supreme Court, in *Santanu Chaudhuri* (supra), made the following order:

"7. We, accordingly, direct the trial court to cause delivery of vacant possession of the premises in dispute to the petitioner Santanu Chaudhuri (the landlord) by eviction of the respondent Subir Ghosh (the tenant) or anybody else found in occupation of the premises, if necessary, with the help of police, within one month of presentation of a certified copy of this order before the trial court. We make it clear that this order will not prevent or prejudice the petitioner (the landlord) from taking any steps for recovery of rent and mesne profits as he is entitled to in accordance with law. The petitioner will also be entitled to Rs.50,000 as costs for the present proceedings. The respondent Subir Ghosh (the tenant) is granted one month's time to deposit the costs in the trial

8 (2007) 10 SCC 253

9 (1992) 1 SCC 157

10 1989 Supp. (2) SCC 418

11 1995 Supp. (1) SCC 464

court. In case the cost is not deposited as aforesaid, the trial court shall recover the amount from Subir Ghosh (the tenant) in accordance with law and the same shall be paid to the petitioner Santanu Chaudhuri.”

33] Applying the aforesaid principles and taking into consideration the conduct of the judgment debtors, it is only appropriate that the judgment debtors are directed to pay costs of Rs.50,000/- (Rupees Fifty Thousand) in favour of the decree holder within a period of four weeks from today.

34] This petition is therefore allowed. The impugned order dated 15th June 2013 made by the Division Bench of the Small Causes Court is set aside and the executing court's order dated 6th May 2013 is restored. The executing court to ensure that this order is implemented within a period of four weeks from today, if necessary, by taking help from the police authorities. In addition, the judgment debtors are directed to pay costs of Rs.50,000/- (Rupees Fifty Thousand) to the decree holder within a period of four weeks from today. The executing court to ensure that such costs are indeed paid by the judgment debtors to the decree holder within a period of four weeks from today.

35] Rule is made absolute with costs as aforesaid.

36] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

37] At this stage, Mr. Bhanage, learned counsel for the judgment debtors applied for a stay and the execution of the decree for a period of eight weeks. Considering the facts and circumstances of the present matter, including the circumstances that the decree, which has attained finality right upto the stage of the Hon'ble Apex Court, there is no case for grant of any stay.

38] Earlier, the matter had gone up to the Hon'ble Apex Court and the judgment debtors were granted four months time to vacate the suit premises, subject to filing of usual undertaking in December 2012. The judgment debtors, failed to file the necessary undertakings, but on the basis of frivolous and repetitive objections have ensured that the decree remains un-executed for last five years. The decree was made on 2nd December 2006 and even as we reach to December 2017, the decree remains unexecuted. Considering all these circumstances, the application for stay is rejected.