

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

WRIT PETITION NO. 9682 OF 2017

M/s. V. Vedak & Associates & Anr. .. Petitioners

v/s.

Sou. Radhabai Sudhakar Mahagaonkar .. Respondent

Mr. Mihir Suhas Raje for the petitioners
Mr. Mihir Pungalia for the respondent

CORAM : M.S. SANKLECHA, J.

DATED : 28th AUGUST, 2017

PC.

1. This petition has been moved for admission and urgent reliefs.
2. This petition under Article 227 of the Constitution of India challenges the order dated 3rd May, 2017 passed by the Civil Judge, Junior Division, Vadgaon Maval, Dist. Pune. The impugned order has issued a warrant of arrest so as to detain the petitioner in civil prison for 15 days.
3. On 18th August, 1994, the Joint Civil Judge, Junior Division, Pune decreed the suit filed by the respondent herein, restraining the

defendants (petitioners herein) *inter alia* from obstructing the use of the suit flat along with amenities by the respondent herein. The aforesaid order dated 18th August, 1994 was subject matter of appeal before the District Court, Pune as well as before this High Court by the petitioners but without any success. Thereafter, the respondent herein moved an execution application. In the execution proceedings, the respondent filed an application dated 20th February, 2010 wherein they have specifically stated on oath that the petitioners herein (Defendants – Judgment Debtors) are restraining / obstructing the respondents herein (Decree Holders) from using the said flat along with amenities, inspite of the orders of this Court. The petitioners did not file any reply to the same. On 19th October, 2016, a show-cause notice was issued to the petitioner as to why he should not be detained in the civil prison and his property as specified in the application dated 20th February, 2010 should not be attached. The petitioner failed to respond to the show-cause notice or attend executing Court. Consequently, on 3rd May, 2017, the impugned order was passed by the Civil Judge, Junior Division, Pune issuing an arrest warrant to detain the petitioner in the civil prison.

4. Mr. Raje, learned Counsel appearing for the petitioners states that the petitioners are in no way obstructing or objecting to the respondent from enjoying the suit flat. In that view of the matter, the impugned order should not have been passed.

5. The petitioners had not filed any reply to the application dated 20th February, 2010 by the respondent, seeking detention of the petitioners to the civil prison as well as attachment of their property. Nor the petitioners replied to the show-cause notice.

6. In the above facts, the exercise of power under Order 21 Rule 32 of the Civil Procedure Code, 1908 for not obeying the order of injunction, the detention in civil prison cannot be said to be without jurisdiction and / or without Authority of law warranting my interference under Article 227 of the Constitution of India.

7. Accordingly, the petition is dismissed.

(M.S. SANKLECHA, J.)