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

CIVIL REVISION APPLICATION NO.46 OF 2017

Leelabai wd/o Vinod Jambhulkar,
Aged about 61 years, Occ: Household,
R/o. Khalasi Line, Mohan Nagar,
Nagpur (L.Rs. of Vinod
Baliram Jambhulkar) & ors ..APPLICANTS

VERSUS

Ku. Kausalya D/o Parashram
Jambhulkar, aged about 72 years,
Occ: Retired, R/o. Swawalambi
Nagar, Nagpur & ors ..RESPONDENTS

Mr M.R. Joharapurkar, Advocate for applicants;

CORAM : N.W. SAMBRE, J.

DATE : 18th APRIL, 2017

ORAL ORDER :

Non applicants herein filed Regular Civil Suit No. 1391 of 1981 for possession of house premises based on the title, as the defendants to the said suit were treated as licensee.

2. The said suit came to be dismissed by learned 16th Joint Civil Judge, Junior Division, Nagpur vide judgment and decree dated 17th January,

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1984, which was reversed in Civil Appeal No. 253 of 1984 vide judgment and order dated 14th December, 1989 by learned 12th Additional District Judge, Nagpur.

3. It is informed at bar that the decree for possession was confirmed in Second Appeal No.59 of 1990, resulting into filing of Regular Darkhast No. 267 of 2002 by the respondent.

4. In the said darkhast, objection pursuant to the provisions of Section 47 of the Code of Civil Procedure came to be filed on behalf of the judgment-debtors on 4th December, 2006 praying for dismissal of execution proceedings, as the decree is not executable. It is claimed that for last continuous twelve years after passing of the decree, no steps are taken for bringing legal heirs of judgment-debtor, original defendant on record. It is also claimed that even in second appeal also, legal heirs were not brought on record. It is claimed by objector that the appellate Court allowed the appeal and passed decree against the

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dead persons.

5. The said objection was resisted by filing reply on behalf of the decree holder, whereby it is pointed out that daughters of deceased are married and after marriage, said parties are residing at different places and as such, they are not necessary parties to the proceedings.

6. In the said darkhast, evidence came to be recorded and the order came to be passed below Exhibit-101 rejecting the objection vide order dated 25th November, 2016 and also passed order below Exhibit-1 and 36 on 10th July, 2015 rejecting the application and issuing possession warrant.

7. Amongst other grounds as are raised by Joharapurkar, learned Counsel for the applicants-judgment debtors is, the judgment passed by the appellate Court is behind back of the judgment-debtors. He would then urge that no opportunity to defend their case was given and as such, the decree cannot be executed against them. In addition, he

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would then urge that the suit premises since falls under slum area, the execution proceedings cannot be sustained, particularly in the back drop of Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. He would then urge that execution proceedings are bad for non joinder of necessary parties.

8. With the assistance, I have perused the judgment delivered by the Additional Sessions Judge, Nagpur in Civil Appeal No. 253 of 1984. It is required to be noted that in the original civil suit, written statement at Exhibit-19 was filed on behalf of the defendants therein and issues were framed at Exhibit-21.

9. The defendants denied the title. The suit came to be decreed on merit after considering the evidence led by respective parties, particularly in the backdrop of pleadings and defence raised.

10. It is then to be noted that Exhibit-36

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objection is mainly raised on two issues namely non joinder of necessary parties and Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

11. So far as issue of non joinder of necessary parties or decree passed behind back of the objector is concerned, the executing Court cannot travel beyond the decree and there are findings recorded that original defendant Nos. 1 to 3 are sons of Jagan, whereas defendant No. 4 is his wife. After death of defendant No.4, defendant Nos. 1 to 3 remained to be legal heirs of defendant No.4 and as such, claim of non joinder of necessary parties as is raised vide objection at Exhibit-36 was found to be incorrect.

12. Section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Re-Development) Act is sought to be pressed into service by learned Counsel for the judgment debtors by submitting that before instituting the suit for eviction, as property is located is notified as slum property,

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no permission was obtained and as such, decree cannot be executable. Section 22 of the said Act reads thus :

"22. Proceedings for eviction of occupiers or for issue of distress warrant not to be taken without permission of competent Authority.

(1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority, -

(a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of any occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or

(b) when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any

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building or land in such area or for recovery of any arrears of rent of compensation from such occupier, or for both execute such decree or order; or

(c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV-A of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any occupier of a house or premises in a slum area.

(1A) Notwithstanding anything contained in sub-section (1) as in force before the commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Second Amendment) Act, 1986 (hereinafter in this section referred to as "the amendment Act") or in any other law for the time being in force, no person shall, except with the previous permission in writing of the Competent Authority,-

(a) execute any decree or order obtained in any suit or proceeding instituted during the period commencing from the 30th

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day of September 1985 being the date of the expiry of the Maharashtra vacant Lands (Further Interim Protection to Occupiers from Eviction and Recovery of Arrears of Rent Act, 1980) and the date of commencement of the amendment Act, for eviction of an occupier from any building or land in a slum area (which area was earlier purported to be covered by the definition of "Vacant land" in clause (f) of section (2) of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction Act, 1975) or for recovery of any arrears of rent or compensation from such occupier, or for both; or

(b) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV A of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any such occupier of a house or premises in any such slum area.

(2) Every person desiring to obtain the permission referred to in sub-section (1)

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or (1-A) shall make an application in writing to the Competent Authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the Competent Authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall, by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under clause (a) or (b) of sub section (1A) the Competent Authority shall take into account the following factors, namely :-

(a) whether alternative accommodation within the means of the occupier would be available to him, if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(b-1) whether, having regard to the relevant circumstances of each case, the total amount of arrears of rent or compensation and the period for which it is due and the capacity of the occupier to

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pay the same, the occupier is ready and willing to pay the whole of the amount of arrears of rent or compensation by reasonable installments within a stipulated time;

(c) any other factors, if any, as may be prescribed.

(4A) (a) In granting or refusing to grant the permission under clause (c) of subsection (1) or clause (b) of subsection (1A) the Competent Authority shall take into account the following factors, namely :-

(i) what is the amount of rent and for what period it is due;

(ii) whether a notice of demand referred to in the proviso to sub- section (1) of section 53 of the Presidency Small Cause Courts Act, 1882 or in the proviso to the sub-section (1) of section 27 B of the Provisional Small Cause Courts Act, 1887, as the case may be, has been duly given to the occupier liable to pay the arrears of rent; (iii) whether the occupier is willing to pay arrears within a stipulated time;

(iv) any other factors, if any, as may be prescribed.

(b) If, within a period of six months

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from the date of receipt of any application for permission under clause (c) of sub-section (1), or clause (b) of section (1A) the Competent Authority does not refuse to grant the permission, it shall be deemed to have been granted at the expiration of such period.

(5) Where the Competent Authority refuses to grant the permission under any of the clauses of sub-section (1)] or (1A) it shall record a brief statement of the reasons for such refusal, and furnish a copy thereof to applicant."

13. What is required to be observed in the backdrop of factual matrix of the present case is, the issue as regards the property is notified as slum property was never raised by the defendants in their defence while the appeal by the appellate Court decreeing the suit for eviction. It is for the first time in the objection, a ground is raised stating that the property is notified as slum area.

14. Though in support of such claim, Competent Officer from the Department of Slum, Nagpur Municipal Corporation was examined, however, it is

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difficult to accept the said version of the objector, particularly at the stage at which, it is raised, as Section 22 of the Act, in my opinion, cannot be read down to create jurisdictional bar to the civil Court entertaining the suit. It is required to be noted that this Court in the matter of ***Fattechand Murlidhar Shop, Sitabuldi, Nagpur vs Shrikrishna Tejmalji Chandak*** reported in ***A.I.R. 1984 Bom. 428*** in paragraph-17 has observed thus :

“17. Shri Deopujari laid stress on certain observations in [Krushna Chandra Sahoo v. Indramani Sahu \(AIR 1984 Orissa 49\)](#). But that again was a case of inherent lack of jurisdiction because the objection had been raised before the executing court that the civil court had no jurisdiction to try suit for eviction when Rent Control Act was in force. Though the objection had not been raised earlier in the suit or in appeal, plea of absence of jurisdiction could still be raised during the execution proceedings. In the present case, as I have already pointed out, [S.22](#) of Act 28 of 1971 does not create a jurisdictional bar to the civil court's entertaining the suit but only places restrictions on the

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persons who propose to institute a suit. If the suit is instituted without the permission of the competent authority, on an objection being raised or the court noticing the non-compliance thereof, the suit will not be entertained. It is true that the permission, as held in *Kalawatibai Lokumal Sindhi v. Gopala Ganpati Bhanarkar* (1984 Mah LJ 261), must be obtained before instituting the suit. No post facto permission can be granted. That would not, however, clothe the court at the stage of execution, with the power of investigate into the facts, when they are not apparent from the face of the record, for deciding whether the suit could have been entertained at all. In view of the observations of the Supreme court such a course would be impermissible. I, therefore, find that the learned Judge of the Court of Small Causes was in error in entertaining of the decree in the circumstances of the present case. The executing court was bound to execute the decree as it stood. The executing court also erred in holding the decree not to be executable as a whole. It was conceded by Shri Deopujari, the learned advocate for the opponent that there could be no objection to executing the decree so far as the monetary parts were concerned."

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15. In view of above, in my opinion, the executing Court has rightly rejected the objection raised.

16. Apart from above, Exhibit-101 was considered and decided by learned executing Court on its own merits and dealt with in detail.

17. As no substance was noticed, the executing Court rejected the same. The reasons noticed in the said order dated 25th November, 2016 below Exhibit-101, in my opinion, are germane to the cause.

18. It is then to be noted that the decree holders are fighting for their claim since 1981 and judgment debtors are evading the decree which was confirmed in the second appeal in this Court.

19. The possession warrant though was issued is also stalled till date.

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20. Having noted the conduct of the applicants of evading the decree for last more than 30 years, it will be appropriate, in my opinion to direct the executing Court to see that the decree is executed within a period of one month from today and the executing Court is expected of to submit compliance report to this Court.

21. Civil Revision Application stands disposed of in above terms.

(N.W. SAMBRE, J.)

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