

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

CIVIL REVISION APPLICATION NO.59 OF 2017

Sallauddin s/o Nasaruddin Kazi,
Aged about 60 years,
Occu. Business (Tailor),
R/o Lingufail, Ward No.15,
Pulgaon, Tah. Deoli, Dist.Wardha

..Applicant

Versus

Kayyamuddin s/o Nasaruddin Kazi,
Aged about major, Occu.Teacher,
R/o Hinganghatfail, Pulgaon

..Respondent

Mr Firdos Mirza & Tejas Deshpande, Advocates for applicant

CORAM : N.W. SAMBRE, J.

DATE : 24th April 2017

PER COURT

1. In Regular Civil Suit No.20 of 1996 for permanent injunction, possession and damages, a decree came to be passed on 4th August 2004 in favour of respondent, which was confirmed upto this Court in Second Appeal.

2. The present objector/judgment debtor initiated another suit being Regular Civil Suit No.124 of 2010 seeking declaration that the decree in the aforesaid suit is not binding on him. Amongst other, the ground that was raised is the transaction in question which was formed to be basis for passing decree for eviction was without approval of revenue authority. Based on above, objection under Section 47 of the Code of Civil Procedure came to be filed which came to be rejected by the executing Court vide order dated 18th January

2017, as such present application.

3. Learned Counsel for the applicant placed reliance upon the judgment of the Apex Court in the matter of **MUNICIPAL BOARD, KISHANGARH VS. CHAND MAL AND CO.**, reported on **(1999) 9 SCC 198**, so as to substantiate his contention that in absence of the order of the Collector granting permission for the sale. judgment in favour of the decree holder has been set aside.

4. It is required to be noted that while dealing with the aforesaid contention, the executing Court was aware about pendency of subsequent suit filed by the applicant being Regular Civil Suit No.124 of 2010 for setting aside the decree under execution. Apart from above, against the dismissal of the suit for setting aside the decree passed in Regular Civil Suit No.124 of 2010, an appeal is pending before this Court, however, there is no injunction operating.

5. It is required to be noted that the Civil Court for the second time had an occasion to examine the right of the present applicant/judgment debtor and there exists judicial pronouncement against the objection passed after adjudicating his right, which is neither stayed nor interfered with on merit by this Court.

6. In addition to above, the reliance placed on the issue of want of permission of the Collector, in my opinion, will have hardly any impact over the decree for possession in question, as the executing Court cannot travel beyond the decree.

7. In the aforesaid circumstances, the reliance placed by the applicant upon the judgment of Apex Court in the matter of Municipal Board, Kishangarh Vs. Chand Mal and Co., (cited supra) will be of hardly any assistance. Application as such fails, stands dismissed.

(N.W. SAMBRE, J.)

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