

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

WRIT PETITION NO. 5553 OF 2017

**RAMESHCHANDRA NANDLAL SODANI THROUGH GPA
SUHAS RAMESHCHANDRA SODANI
VERSUS
ASARAM RAMBHAU KHOLE AND OTHERS**

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Advocate for the Petitioners : Shri M. M. Joshi
Advocate for Respondent Nos. 1 and 2 : Shri S. S. Patunkar

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 30th JULY, 2018.**

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PER COURT :

1. By this Writ Petition, this petitioner has challenged the order dated 31/01/2017 passed below Exhibit 11 in R.D. No. 3/2016, by which, the executing Court has rejected the prayer of this petitioner that he should be given police protection to carry out the repairs of barbed fencing, which was allegedly damaged by the judgment debtors who are respondents herein. By the impugned order, the executing Court has concluded that the contentions of the decree holder that he is being obstructed by the judgment debtors, will entitle him to seek a remedy under different provisions of law.
2. The grievance of the petitioner is that when an execution

proceeding is pending and the barbed fencing, by which, the petitioner was protecting his agricultural land was damaged, the executing Court should have looked into the matter by taking a pragmatic approach rather than refusing to pass an order causing multiplicity of litigation by permitting this petitioner to take recourse to any other remedy as may be permissible in law. By drawing such a conclusion the application, under Order 39 of the Code of Civil Procedure has been rejected.

3. Reliance is placed upon the judgment of this Court in the matter of *Shrimati Ratnabai w/o Narayanrao Naik and another Vs. Shri Satwarao s/o Narayanrao Naik, AIR 1995 Bombay 61*, wherein, this Court has concluded that a Court can exercise its inherent powers under Section 151 of the CPC by granting appropriate police help to the decree holder either on an application filed in the pending proceeding or by filing a separate application. It was held that it will always be open to the decree holder to invoke the jurisdiction under Section 151 of the CPC. No doubt, police help is an extraordinary mode or procedure to implement the execution of the decree or orders. In other words, police help is to be regarded as an extreme

step and hence, it should not be recommended unless the Court is fully convinced of the existence of a grave emergency.

4. The decree holder, praying for police help, has to make out a ground of (i) apprehension of violence or obstruction from the judgment debtor himself or at his instance by some others or ; (ii) because of the conditions of a general character such as the locality where execution will have to be effected being in a disturbed state or a class of people or similarly situated persons who are likely to make a common cause with the judgment debtor and resist the execution.

5. The learned Advocate for the respondents has strenuously canvassed that the onus and burden lies on the petitioner to make out a prima-facie case. He has canvassed a host of factors in support of his contentions by contending that some unknown persons are also impleaded in Miscellaneous Application as being those, who have disturbed the plaintiff's possession or may have damaged the barbed fencing. Reliance is placed upon the affidavit in reply dated 27/07/2017 to contend that the impugned order is just and proper.

6. Considering the vehement submissions of the learned

Advocate for the respondents, I had called upon him to take instructions, whether, he can make a statement that these respondents have never damaged the barbed fencing and have never disturbed the petitioner to the extent of his ingress and egress to his agricultural field and whether, they have no intention of causing any disturbance.

7. The learned Advocate for the respondents submits, on instructions, that he cannot make this statement. His apprehension is that it would pre-suppose that the respondents have damaged the barbed fencing. This statement of the learned Advocate for the respondents speaks louder than words. If the respondents cannot make a statement, which takes care of their past, present and future conduct, it is obvious that they do not desire to commit that they would not disturb the petitioner from entering his own agricultural farm/land and protect his farm/land by repairing the barbed fencing at his own costs.

8. When this Court (Coram : M. S. Sanklecha, J.), heard the petitioner on 05/05/2017, the following order was passed :-

"1] The petition is not on Board. Upon mentioning, production is allowed.

2] Heard learned counsel for the petitioner.

3] Issue notice before admission to respondents returnable on 27.6.2017.

4] This petition challenges the order dated 31.1.2017 passed by the learned Civil Judge (J.D.), Ambad, in execution proceedings. By the impugned order, the petitioner's application seeking Police protection so as to carry out necessary repairs to the barbed fencing and gate of the property in possession of the petitioner, has been rejected.

2] In terms of the Court decree, the defendants were not to cause any interference or obstruction in the petitioner's (plaintiff) peaceful possession of the suit property. The petitioner's application for relief in respect of his barbed fencing is denied on the ground that the decree does not provide for not damaging the barbed fencing and therefore, the executing Court, to which this application is made, cannot go behind the decree.

3] In the context of the facts recorded, prima facie, the conclusion in the impugned order that it cannot prevent the respondents from damaging the barbed fencing on the petitioner's property appears to be perverse. In fact, after the passing of the impugned order dated 31.1.2017, the respondents have been further

emboldened and are damaging the petitioner's barbed fencing and gate. This led the petitioner to filing a FIR on 18.2.2017.

4] In the above facts, there shall be ad interim stay in terms of prayer clause [C] till the returnable date i.e. 27.6.2017".

9. Considering the judgment delivered by this Court in *Smt. Ratnabai (supra)*, it is obvious that, the executing Court would protect the interest of the decree holder if he can point out either an apprehension of violence or obstruction from the judgment debtor or by others at his instance or if he can point out that some damage or obstruction is already caused. The executing Court would not abdicate its powers declaring that it has no jurisdiction and relegate such an affected decree holder to another proceeding, thereby, causing multiplicity of the proceedings.

10. The petitioner has made out a case that his barbed fencing protecting his agricultural land from the judgment debtors or other persons, has been damaged. He applied to the executing Court for police protection only to repair the damaged barbed fencing at his own costs. The executing Court

could not have shown its helplessness in not protecting the interest of the decree holder. In this backdrop, the contentions of the judgment-debtors that the execution proceedings may be dealt with first and this issue be ignored, is not a sustainable submission, rather is a mischievous submission.

11. Considering the above, this Writ Petition is allowed in terms of prayer clause- 'B', by which, the prayer putforth in Exhibit 11 dated 20/10/2016 is accepted. Prayer Clause 'B' reads as under :-

"(B) By issuing Writ of Certiorari or any other appropriate writ, order or directions in the nature of writ, be pleased to quash and set aside impugned order dated 31/01/2017, passed below Exh.11 in R.D. No. 3/2016, by Ld. CJJD Ambad and be pleased to allow the application filed by the petitioner below Exh. 11, in R.D.No. 3/2016".

(RAVINDRA V. GHUGE, J.)

shp/-