

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

WRIT PETITION NO.9418 OF 2017

Kum. Aniket Anant Lale & Ors.

...Petitioners

V/s.

Shri. Prakash Balu Lale & Ors.

....Respondents

Mr. P. M. Arjunwadkar for Petitioners.

Mr. Surel Shah for Respondents Nos.1 to 4.

CORAM : M.S. SONAK, J.

DATE : 1st MARCH, 2018

ORAL JUDGMENT :

1. Heard Mr. Arjunwadkar, the learned counsel for the petitioners and Mr. Shah, the learned counsel for Respondent Nos.1 to 4.

2. Mr. Shah submits that he has already filed Vakalatnama for Respondent Nos. 1, 2 and 3 and he will file Vakalatnama for Respondent No. 4 within a period of one week from today.

3. The petitioners are legal representatives of Mr. Anant Lale, who was admittedly a judgment debtor under the decree in RCS No. 319 of 2000 instituted by late Balu Bhuji Lale. The Respondent Nos. 1 to 3, represented by Mr. Shah, are the legal representatives of late Balu Bhuji Lale, the decree-holders in RCS No. 319 of 2000.

4. Balu Bhuji Lale had instituted RCS No. 319 of 2000 to seek decree of specific performance as well as cancellation of sale deed in

favour of Mr. Anant Lale, a subsequent purchaser of the suit property. The trial court partly decreed the suit by declining the relief of specific performance but awarding compensation / damages. The first appellate court however reversed the decree, granted specific performance and cancelled the sale deed in favour of Mr. Anant Lale. The second appeal and the special leave petition instituted by Anant Lale came to be dismissed in the year 2008 itself. This means in the year 2008 itself the decree cancelling the sale deed in favour of Anant Lale and directing him to restore the possession of the suit property in favour of the decree-holders attained finality right upto the level of the Hon'ble Supreme Court.

5. The execution petition i.e. R.D. Application No. 81 of 2008, which the decree-holders had already instituted in the Court of the Civil Judge, Junior Division at Jaysingpur was therefore pursued by the decree-holders consequent upon the decree attaining finality. In the year 2015, during the pendency of such execution proceedings, Mr. Anant Lale expired. The petitioners who are the legal representatives of Anant Lale were brought on record in the year 2015 itself.

6. In the year 2016 the petitioners instituted RCS No. 229 of 2016 in the Court of the Civil Judge, Senior Division at Jaysingpur seeking for injunction simplicitor to restrain Respondent Nos. 1 to 4 i.e. the decree-holders from taking forcible possession of the suit property otherwise than by the due process of law.

7. The petitioners, after the institution of RCS No. 229 of 2016

in the Court of the Civil Judge, Senior Division at Jaysingpur, filed an application at Exhibit 65 in the execution petition – R.D. Application No. 81 of 2008 in the Court of the Civil Judge, Junior Division at Jaysingpur seeking a stay on the execution of the decree made in RCS No. 319 of 2000 until RCS No. 229 of 2016 is decided. The petitioners, in this application at Exhibit 65, invoked the provisions of Order XXI Rule 29 of the CPC. By the impugned order dated 3rd February 2017, the executing court i.e. the Civil Judge, Junior Division at Jaysingpur, has rejected the application at Exhibit 65. Hence, the present petition.

8. Mr. Arjunwadkar, the learned counsel for the petitioners submits that the executing court has misinterpreted the scope and import of Order XXI Rule 29 of the CPC. He submits that the provisions of Order XXI Rule 29 of the CPC provide that where a suit is pending in any court against the decree-holder, the executing court may, on such terms as to security or otherwise, as it thinks fit, stay the execution of the decree until such pending suit has been decided. He submits that the legislature has advisedly made no reference to the type of the suit which may be pending. He therefore submits that irrespective of the type of the suit, once it is established that the judgment debtor or the parties seeking through or under the judgment debtors have instituted a suit against the decree-holders, the executing court is obliged to stay the decree under execution under the provisions of Order XXI Rule 29 of the CPC.

9. Mr. Arjunwadkar submits that even though the legislature has employed expression '*may*' in Order XXI Rule 29 of the CPC, the

same does not mean that the executing court can refuse to exercise discretion or jurisdiction vested in it or exercise discretion or jurisdiction with material irregularity as has been done in the present case.

10. Mr. Arjunwadkar submits that the father of the petitioners Mr. Anant Lale had purchased the suit property by means of a registered sale deed. The petitioners, who are admittedly the legal representatives of Mr. Anant Lale cannot be evicted from the suit property otherwise than by the due process of law. Mr. Arjunwadkar submits that since this issue is pending in RCS No. 229 of 2016, the executing court was obliged to stay the execution of decree in RCS No. 319 of 2000. The failure of the executing court to do so amounts to failure to exercise jurisdiction or in any case amounts to exercise of jurisdiction with material irregularity. For all these reasons, Mr. Arjunwadkar submits that the impugned order warrants interference.

11. Mr. Shah, the learned counsel for the Respondent Nos. 1 to 4 – decree-holders points out that the application invoking Order XXI Rule 29 of the CPC as also the institution of the present petition constitutes gross abuse of the process of law. He submits that the decree in RCS No. 319 of 2000 has attained finality right upto the level of the Hon'ble Supreme Court. He points out that the contentions of Mr. Anant Lale, the predecessor-in-title of the petitioners to the effect that he was a *bona fide* purchaser of the suit property for value and without notice of any prior encumbrances has been expressly rejected by the first appellate court and such rejection has been confirmed by this court and the Hon'ble Supreme Court in

the year 2008 itself.

12. Mr. Shah submits that the registered sale deed upon which the petitioners now place reliance has already been declared void and there is a direction to restore possession to the decree-holders. He submits that for a period of almost 7 years i.e. between 2008 to 2015, Anant Lale, the judgment debtor, who was very much a party to the execution proceedings did not think it appropriate to either institute suit to question the decree in RCS No. 319 of 2000 which had already attained finality or to seek a stay on the execution proceedings. Upon his demise, the petitioners who have stepped into shoes of Anant Lale, were therefore not entitled to question the decree or delay its execution on frivolous grounds. Mr. Shah submits that the decree-holders in the present case do not seek to oust the petitioners otherwise than by due process of law but rather they seek to recover possession of the suit property from the petitioners by adoption of due process of law i.e. execution of decree in RCS No. 319 of 2000 which has already attained finality.

13. Mr. Shah submits that the interpretation suggested by Mr. Arjunwadkar on the provisions of Order XXI Rule 29 of the CPC is quite misconceived and if upheld, will be capable of serious mischief. Mr. Shah submits that in any case the provisions of Order XXI Rule 29 of the CPC are discretionary and in the exercise of such discretion the executing court is obliged to examine whether an attempt on the part of the judgment debtors is to simply postpone or prolong the execution proceedings by instituting frivolous suits or proceedings. Mr. Shah submits that in the present case, discretion

has been exercised by the executing court in a fair and reasonable manner and therefore there is no case made out to interfere with the impugned order.

14. The rival contentions now fall for determination.

15. In this case, there is no dispute as regards basic facts. The decree in RCS No. 319 of 2000 has declared the sale deed in favour of Anant Lale, the predecessor-in-title of the petitioners as null and void and has further directed, Anant Lale to restore the possession of the suit property to the decree-holders. This decree has attained finality upto the level of the Hon'ble Supreme Court in the year 2008 itself. There is also no dispute that Mr. Anant Lale during the period between 2008 and his demise in the year 2015 was very much a party to the execution proceedings in the Court of Civil Judge, Junior Division. During this period of 7 years, Anant Lale neither instituted any suit to question decree in RCS No. 319 of 2000 nor did he take out any other application to delay or resist execution of the decree in RCS No. 319 of 2000. Possibly, Anant Lale was satisfied taking benefit of the Law's proverbial delays in execution of decrees for restoration of possession. After the demise of Anant Lale in the year 2015 his legal representatives i.e. the petitioners herein were brought on record since, they were also bound by the decree in RCS No. 319 of 2000.

16. It is only in the year 2016 that the petitioners, instituted RCS No. 229 of 2016 in the Court of Civil Judge, Senior Division, Jaysingpur seeking for relief of injunction simplicitor to restrain the

decree-holders in RCS No. 319 of 2000 from taking forcible possession of the suit property otherwise than by the due process of law.

17. After the institution of this suit, the petitioners, took out the application at Exhibit 65 in the executing court i.e. the Civil Judge, Junior Division seeking a stay on execution proceedings by invoking provisions of Order XXI Rule 29 of the CPC. By the impugned order, it is this application at Exhibit 65 which has been dismissed by the executing court.

18. Order XXI Rule 29 of the CPC provides that where a suit is pending in any court against the holder of a decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed the court may, on such terms as to security or otherwise, as it thinks fit, stay the execution of the decree until the pending suit has been decided. The proviso, with which we are not concerned in this case deals with stay of a decree for payment of money.

19. The petitioners' application at Exhibit 65 invoking the provisions of Order XXI Rule 29 of the CPC was entirely misconceived and therefore was rightly dismissed by the executing court by the impugned order. In the first place, the suit instituted by the petitioners i.e. RCS No. 229 of 2016 was not instituted in the Court of Civil Judge, Junior Division at Jaysingpur where the execution petition was pending. Secondly and in any case, it is apparent that the RCS No. 229 of 2016 was entirely misconceived

since, the decree-holders in the present case, were only executing the decree in RCS No. 319 of 2000 and therefore, there was no question of their seeking restoration of possession of the suit property, otherwise than by due process of law. In such circumstances, the executing court, has quite correctly exercised the discretion which was undoubtedly vested in it in terms of Order XXI Rule 29 of the CPC and declined to stay the execution proceedings which are pending since the year 2008 for no fault of the decree-holders.

20. From the plain reading of the provisions of Order XXI Rule 29 of the CPC it is quite clear that a judgment debtor may invoke the provisions of Order XXI Rule 29 of the CPC only when the suit is pending in any court against the decree-holder of *such court* or of a decree which is being executed by *such court*. This means that the suit and the execution proceedings must be pending in one and the same court in order to invoke the provisions of Order XXI Rule 29 of the CPC.

21. The expression '*such court*' as it appears in Order XXI Rule 29 of the CPC has been interpreted by the Hon'ble Supreme Court in the case of ***Shaukat Hussain @ Ali Akram & Ors. vs. Bhuneshwari Devi (dead) by L.Rs. & Ors.***¹ to mean the Court in which the suit is pending. At paragraph 6, the Hon'ble Supreme Court, after analyzing the provisions of Order XXI Rule 29 of the CPC has held that it is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceedings in execution at the instance of the decree-holder against the

1 AIR 1973 SC 528

judgment debtor and the other, a suit, at the instance of the judgment debtor against the decree-holder. That is the condition under which the court in which the suit is pending may stay the execution before it. Besides, it is not enough there is a suit pending filed by the judgment debtor. It is further necessary that the suit must be against the holder of a decree of such court. The words '*such court*' are important. '*Such court*', means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule.

22. In *Shaukat Hussain* (supra), the Hon'ble Supreme Court has also explained the purpose for enactment of Order XXI Rule 29 of the CPC. At paragraph 7, the Hon'ble Supreme Court has observed that it is true that in appropriate cases a Court may grant an injunction against a party not to prosecute a proceeding in some other Court. But ordinarily Courts, unless they exercise appellate or revisional jurisdiction, do not have the power to stop proceedings in other Courts by an order directed to such Courts. For this specific provisions of law are necessary. Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree had been passed by that Court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution. In fact this is emphasized by Rule 26 already referred to. In the case before the Supreme Court the decree sought to be executed was

not the decree of Munsif 1st Court Gaya but the decree of the Subordinate Judge, Gaya passed by him in exercise of his Small Cause Court jurisdiction. In these circumstances, the Hon'ble Supreme Court held that the order staying execution passed by the Munsif, Gaya would be incompetent and without jurisdiction.

23. The principle in *Shaukat Hussain* (supra) was reiterated in ***Krishna Singh vs. Mathura Ahir & Ors.***² In the said case, a suit for recovery of possession of property belonging to a Math was decreed by Munsif and said decree was finally affirmed by the Supreme Court holding that the plaintiff was in *de facto* management of the property though his title as Mahant was left open. The decree also held that the defendant in the suit was a trespasser. The defendant not satisfied with the decree which attained finality upto the level of the Supreme Court and in order to nullify the decree which had already attained finality filed a civil suit in which he raised almost the same pleas which he had taken in defence of the previous suit. This suit was encouraged by the observation made by the Hon'ble Supreme Court itself that the title of the plaintiff as Mahant was left open. Such suit was filed before the Civil Judge at Varanasi. Thereafter, the defendant, filed application under Order XXI Rule 29 of the CPC seeking for a stay to the execution of the decree which had already attained finality upto the level of the Supreme Court. The stay as sought for was granted in purported exercise of power under Order XXI Rule 29 of the CPC.

24. The Hon'ble Supreme Court, in the aforesaid facts and

² AIR 1982 SC 686

circumstances, not only set aside the stay order but also directed the judicial officer to explain as to why, despite clear orders, of the Hon'ble Supreme Court, the execution was halted by an extraordinary and palpably wrong order under Order XXI Rule 29 of CPC. The Court observed that the defendant seems to have adopted a subterfuge in order to nullify the execution of the decree. The Court held that there was very formidable defect in the order passed under Order XXI Rule 29 of the CPC because jurisdiction is vested only in the court which had passed the decree to stay its execution. The Court relied upon its earlier ruling in *Shaukat Hussain* (supra) and explained that the additional words '*or of a decree which is being executed by such Court*' introduced by section 72 of the Amendment Act 104 of 1976 in order XXI Rule 29 of the CPC, did not make any difference to the legal position explained in *Shaukat Hussain* (supra).

25. In ***Balasaheb s/o. Gulabrao Salunke vs. Anil s/o. Raosaheb Deshmukh & Ors.***³, the learned Single Judge of this Court, following *Shaukat Hussain* (supra) has held that there should be simultaneously two proceedings in the same court, i.e. execution proceedings must be at the instance of the decree-holder against the judgment debtor and the other suit at the instance of the judgment debtor against the decree-holder for invocation of the provisions of Order XXI Rule 29 of the CPC.

26. In the present case, the execution proceedings are pending before the Civil Judge, Junior Division at Jaysingpur and the RCS No. 229 of 2016, on the basis of which the provisions of Order XXI Rule

3 2017 (4) Mh.L.J. 399

29 of the CPC were sought to be invoked, is pending in the Court of Civil Judge, Senior Division at Jaysingpur. In such circumstances, the petitioners attempt to invoke the provisions of Order XXI Rule 29 of the CPC was entirely misconceived.

27. That apart, the learned executing court has referred to the number of rulings in the impugned order which explain that the provisions of Order XXI Rule 29 of the CPC only confer a discretion upon the executing court to stay the execution proceedings. This is on the basis that the provision employs the expression '*may*' and not '*shall*'. This means that even if the predicates of Order XXI Rule 29 of the CPC stand complied with, it is not obligatory upon the executing court to stay the execution proceedings. The power of the executing court is discretionary and the executing court is duty bound to exercise such discretion in a judicious manner.

28. In the present case, the decree-holders seek to recover possession from the petitioners – judgment debtors by instituting execution proceedings to execute the decree in RCS No. 319 of 2000 which has attained finality upto the level of the Hon'ble Supreme Court. This is certainly not a case where the decree-holders seek to recover possession of the suit property from the judgment debtors either forcibly or otherwise than by due process of law. The decree itself has attained finality in the year 2008 itself. The suit on basis of which the provisions of Order XXI Rule 29 of the CPC were sought to be invoked was instituted in the year 2016. The suit was instituted not by the original judgment debtor who succeeded in delaying the execution proceedings from 2008 to 2015, but, by the legal

representatives of the deceased judgment debtor, after they were brought on record in the year 2015.

29. Taking into consideration all these factors, it cannot be said that the executing court in declining stay, has exercised the discretion, which was undoubtedly vested in it, either unreasonably or arbitrarily. In fact, this is a case where discretion has been exercised in a judicious manner, taking into consideration the fact that the decree which has attained finality in the year 2008 right upto the level of the Hon'ble Supreme Court, is yet pending in execution.

30. In *Shreenath & Anr. vs. Rajesh & Ors.*⁴, the Hon'ble Supreme Court was constrained to observe that the seeker of justice, many a times, has to take long circuitous routes, both on account of hierarchy of Courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breaths fear of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with may hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of the hierarchy of Courts was for a reasonable objective for

4 (1998) 4 SCC 543

conferring greater satisfaction to the parties that errors, if any, by any of the lower Courts under the scrutiny of a higher Court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seekers in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within permissible limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, Legislators and Courts. How to eliminate such a long consuming justice? We must confess that we have still to go long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice.

31. The Hon'ble Supreme Court after this preface has finally held that in interpreting any procedural law, where more than one interpretation is possible, the one which curtails the procedure without eluding justice is to be adopted. The procedural law is always subservient to and is in aid of justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

32. In *Satyawati vs. Rajinder Singh & Anr.*⁵, the Hon'ble Supreme Court recalled the observations of the Privy Council in *General Manager of the Raj Durbhunga vs. Coomar Ramaput*

5 (2013) 9 SCC 491

*Sing*⁶ that '.....the difficulties of a litigant in India begin when he has obtained a decree'. In this case, the Hon'ble Supreme Court deprecated the delay in execution of a decree made in the year 1996 and went on to refer to the judgment of the *Privy Council in Kuer Jang Bahadur vs. Bank of Upper India Ltd.*⁷ that 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. The Supreme court noted that inspite of such observations in 1925, the Supreme Court, in *Babu Lal vs. Hazari Lal Kishori Lal*⁸ was constrained to observe that 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 thwart the execution by all possible objections.

33. In *Satyawati* (supra), the Hon'ble Supreme Court made reference to *Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd.*⁹, in which the Hon'ble Supreme Court had noted that execution 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

6 (1871-72) 14 MIA 605: 20 ER 912

7 AIR 1925 Oudh 448 (PC)

8 (1982) 1 SCC 525

9 (1999) 2 SCC 325

that after obtaining a decree for possession of immovable property, its execution takes a long time.

34. The Hon'ble Supreme Court also made reference to its decision in *Shub Karan Bubna vs. Sita Saran Bubna*¹⁰, again recalling proverbial observation by the Privy Council that the difficulties of a litigant begin when he obtains a decree and therefore 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. The Hon'ble Supreme Court concluded by stating that it strongly feels that there should be no 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.

35. Applying such principles to the facts and circumstances of the present case it is necessary to observe that there was nothing *bona fide* either, in the application at Exhibit 65 or at least *prima facie*, in the institution of RCS No. 229 of 2016. As noted earlier, the decree-holders seek to recover possession of the suit property on the basis of decree in RCS No. 319 of 2000 which has attained finality in the year 2008 upto the level of the Hon'ble Supreme Court. In such circumstances, to allege that there is any apprehension that the

¹⁰ (2009) 9 SCC 689

decree-holders seek to recover possession of the suit property forcibly or otherwise than by due process of law, at least *prima facie*, is quite misconceived. In the facts and circumstances of the present case, a reasonable inference can be drawn that the very institution of RCS No. 229 of 2016 is to prolong or delay the execution proceedings in respect of decree in RCS No. 319 of 2000, which as noted earlier, has attained finality right upto the level of the Hon'ble Supreme Court, way back in the year 2008 itself.

36. Accordingly, there is no merit in this petition, which is hereby dismissed. There shall however be no order as to costs. The interim order, if any, is hereby vacated. The executing court is directed to proceed with the execution expeditiously.

(M.S. SONAK, J.)

CHANDKA