

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

WRIT PETITION NO. 7643 OF 2018

Shri. Sunil Anandrao Patil ...Petitioner

Versus

Shri Ashok Balkrishna Lolage ...Respondent

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Mr. Chetan G. Patil for the Petitioner.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 26, 2018**

P.C. :

1. The learned Counsel for the petitioner produces affidavit dated 24th July, 2018 of Shri Sunil A. Patil wherein he has stated that he went to the house of the respondent and tried to serve a notice before Court. Thereafter, he personally visited the house of the respondent twice on 27th July, 2018, however, the respondent was not present and his family members refused to accept the notice. The affidavit of service is taken on record and marked as **Exhibit -1**.

2. This Petition is directed against the order dated 10th April, 2018 passed by the learned 3rd Jt. Civil Judge, Senior Division, Kolhapur below Exhibit -1 in Regular Darkhast No. 62 of 2015 filed by the respondent.

3. The learned Counsel for the petitioner, who is the judgment debtor, has submitted that the petitioner has taken objection in the execution proceedings on the ground that as per the Consent Terms filed in Regular Civil Suit No. 630 of 2003, the actual possession of the suit shop was given to the respondent i.e., decree holder on 31st August, 2007. The decree was satisfied on that day. However, the respondent/decree holder did not want the suit shop and, therefore, the respondent put the petitioner in possession of the suit shop and allowed him to run the business. The respondent directed the petitioner to pay monthly rent of the suit shop in the account of his wife. Since then, the petitioner is deposited monthly rent in the account of the wife of the respondent. He has further submitted that there are two important aspects, which are not taken into account by the learned Judge of the Executing Court in proper perspective. Firstly, the respondent/decree holder did not take steps for a period of 8 years. Thus, it shows that he was taken possession of the suit shop as per Clause 8 of the Consent Terms. Secondly, the petitioner has regularly deposited the monthly rent in the account of the wife of the respondent, which is contrary and thus, there is different relationship is created between the decree holder and the judgment debtor as a tenant and sub tenant. He has further submitted that no written agreement was created in respect of the transaction. The decree holder himself is a tenant of one Namdev Shimpi Samaj,

who is the owner of the suit property.

4. Heard submissions. Perused impugned order and the records placed before this Court. Nothing is produced by the petitioner to show that the possession of the suit shop was handed over by him to the decree holder on 31st August, 2007. As per the terms and conditions of the Consent Terms, if the possession would have been handed over on 31st August, 2007, then that evidence is to be necessarily produced before the Court. Thereafter, only the Court can accept further submission and the case of the petitioner that after satisfying the decree, a different transaction has taken place between the judgment debtor and the decree holder and it requires initiation of an independent proceeding to acquire possession of the suit shop. In the absence of such possession receipt or any proof disclosing the status of the decree holder as per the Consent Terms, it cannot be presumed that the possession was in fact handed over to the decree holder on the same day i.e., 31st August, 2007. The learned Judge of the trial Court in fact has dealt with both the submissions, which are advanced by the learned Counsel for the petitioner before this Court. The learned Judge of the trial Court has rightly held that even though it is assumed that the monthly rent is regularly deposited in the account of the wife of the decree holder, this itself is not a conclusive proof to draw inference that

the possession was handed over to the decree holder as per the terms and conditions. Moreover, a maximum period of 12 years is prescribed under the law for execution of decree, thus, the execution is within limitation. So, the view taken by the learned Judge of the trial Court cannot be faulted with. The reasoning given by the learned Judge of the trial Court is sound and legal.

5. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)