

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12600 OF 2018

SATYABHAMA SHAMRAO RANER AND ANOTHER
VERSUS
CHINTAMANI APPASAHEB GIRAM

Advocate for Petitioner : Mr. P.N. Kalani.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 18.02.2019

PER COURT :

1. I have heard the learned petitioners at length.
2. The bailiff report indicates that Court notice was attempted to be served on the respondent. He has refused to accept the said notice. Service, is therefore, complete.
3. The petitioners are aggrieved by the order dated 20.03.2018, passed by the executing Court vide which application Exhibit 18, filed by the decree holder in RD No. 03/2017, has been allowed under Order XXI Rule 33 of the Code of Civil Procedure and both the petitioners are directed to be detained in civil prison for 15 days for committing the breach of the judgment and decree in RCA No. 21/2008.
4. Learned counsel for the petitioners has strenuously criticized

the impugned order and submits that it is virtually an ex-parte order. The said order is harsh and deserves to be quashed and set aside. The petitioners did not get an opportunity of opposing Exhibit 18. Allegations set out in Exhibit 18 are false and denied.

5. I find that the decree holder had moved the said application under Order XXI Rule 32 setting out circumstances such as, the judgment debtors and their agents having visited the suit land on 14.04.2017, the decree holder was at the suit land, the judgment debtors threatened him with dire consequence if he cultivated the land and then they are said to have pushed the decree holder and judgment debtor No. 2 has thrown a Chappal on the decree holder. While leaving the field, they threatened the decree holder with further dire consequence. The decree holder approached the Police Station, Pathri, and though has lodged the complaint, the police has not initiated any action.

6. The record reveals that though the summons were served on this judgment debtors and they have appeared through an advocate, a specify reply is not filed. Matter proceeded without their say. The decree holder was not cross-examined and the judgment debtors failed to lead any evidence.

7. *Prima facie*, I do not find any reason to interfere with the impugned order. However, the learned advocate for the petitioners submits that petitioner No. 1 is 75 years old and petitioner No. 2 is 35 years of age and has recently suffered a miscarriage.

8. Having said so, I find that the impugned order would meet the ends of justice ;

(a) This petition is disposed of.

(b) The petitioners shall appear before the executing Court on 21.02.2019, when the execution proceeding is already posted.

(c) Both the petitioners shall deposit an amount of Rs. 10,000/- each on/or before 08.03.2019, before the executing Court and till the said date, the petitioners would be protected from being detained in civil prison.

(d) The petitioner shall also enter an affidavit undertaking on/or before 08.03.2019, before the executing Court, setting forth an unconditional apology for having behaved badly with the decree holder and a further statement that henceforth they shall not commit such act.

(e) Only if the above directions are complied with, the executing Court would entertain an application which would be filed by these petitioners praying for reviewing the order dated 20.03.2018 and the same shall be

decided on its merits.

(f) If the above directions are not complied with on/or before 08.03.2019, this order shall stand recalled and these petitioners shall immediately be taken into custody, so as to be detained in civil prison for 15 days on 09.03.2019.

(g) After the amount is deposited, the decree holder would be at liberty to withdraw the said amount without conditions.

(RAVINDRA V. GHUGE, J.)

S.P.C.