

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

WRIT PETITION NO.14141 OF 2019

PANDIT GANPATRAO NIKAM
VERSUS
PURUSHOTTAM RAMCHANDRA VYAWHARE

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Advocate for the Petitioner : Shri S. S. Choudhary
None present for the Respondent.

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 13th DECEMBER, 2019

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PER COURT :

1. None present for the Respondent.
2. The Petitioner / original defendant and judgment debtor is aggrieved by the order dated 24/09/2019, by which, the Appellate Court has declined to grant protection to the judgment debtor and application Exhibit 5, filed in CMA No. 271/2019, has been rejected.
3. The learned Advocate for the Petitioner has strenuously criticized the impugned order and has

submitted that the order is perverse and erroneous. Reliance is placed upon the six grounds formulated in the memo of the petition to support the contention that the decree in Rent Suit No. 3/15 dated 28/03/2018, has not been fully executed. Some articles belonging to the judgment debtor are still in the premises.

4. It is further submitted that as a Regular Civil Appeal challenging the judgment and decree dated 28/03/2018 was not filed within limitation, the Petitioner preferred such an Appeal alongwith an Application for condonation of delay. The said application is still not decided and the appeal is yet to be registered. However, as the judgment debtor had urgency in the matter, application Exhibit 5 was filed in the application for condonation of delay for seeking ad interim protection.

5. I find from the impugned order that the executing Court has noted that after the decree holder filed Regular Darkhast No. 74/2018 seeking execution of the decree, the decree was executed. The bailiff report indicates that the nephew of the J.D. Shri Deepak Nikam was present at the premises and he agreed to hand over the possession of the suit premises. Accordingly, the possession of the suit premises was delivered to the decree holder in the presence of the witness as is set out in the warrant.

6. The learned Advocate for the J.D. submits that the J.D. had gone to the police station and reported loss of possession at the hands of his relatives. He admitted that he is not in possession of the suit premises.

7. Considering the above, I do not find that the executing Court has committed any error in

concluding that the possession of the premises is already lost by the J.D. and the D.H. has been delivered the possession and that there would be no reason to stay the decree when the application for condonation of delay is pending and the Regular Civil Appeal is not yet registered.

8. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-