

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

WRIT PETITION NO.13684 OF 2018

1 Manisha Sampatrao Bhosale
Age: 59 years Occ: Household

2 Bhagyeshwari Sampatrao Bhosale
Now Bhagyeshwari Sanjay Sawant
Age: 34 years, Occ: Housewife

3 Chandreshwari Sampatrao Bhosale
Now Yashree Yogendra Naik
Age: 32 years, Occ: Housewife

4 Poojeshwari Sampatrao Bhosale
Age: 31 years, Occ: Service,
Address: at Plot No.36, Unit No.2,
Ambai Defence Co-operative
Housing Society Limited, Kolhapur

5 Smt. Vimal Baburao Chavan
Age: 75 years Occ: Household
Through her Power of Attorney
Manisha Sampatrao Bhosale
Age: 59 years, Occ: Household
Residing at Plot No.36, Unit No.2,
Ambai Defence Co-operative
Housing Society Limited, Kolhapur
Petitioners

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Versus

1 Balkrishna Shamrao Mhapralkar

Age: 70 years, Occ: Business,
Residing at Nalasopara
Taluka: Vasai, District Thane

2 Smt. Vandana Nandkumar Ghane
Age: 56 years,
Residing at Nandanvan, Gurukrupa
Colony, Shahu Nagar, Gondavali,
District Satara

3 Smt. Pratibha Shivaji Pawar,
Age: 60 years,
Residing at Sector No.16-A, Cicli
Apartment, Block No.402, Nerul,
New Mumbai

4 Smt. Sarita Sudhir Kadam
Age: Major,
Residing at Vinayak Nagar,
Chandgud Apartment,
Bhangani, Pune

5 Shri Vilasrao Shripatrao Ghadge
Age: Major,
Residing at Mangaon Post Sakhshi,
Taluka Shahuwadi, District Kolhapur

6 Vikramsinha Sadashiv Bhosale
Age: Major,
Residing at Shambhaji Chowk,
Shirale, District Kolhapur

7 Smt. Rajeshwari Sampatrao Bhosale
Age: Major,
Residing at Plot No.36 Unit No.2,
Ambai Defence Personal Co-operative

Housing Society Limited,
E-Ward, Kolhapur.

8 Ambai Defence Personal Co-operative
Housing Society Limited, Kolhapur
Through its Chairman, 90 Ambai Nagar,
Sagarmul, Kolhapur
Respondents

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Mr. Kishor Patil i/by Ms. Rukmini Khairnar for the Petitioners.
Mr. S.S.Patwardhan i/by Mr. Bhooshan R. Mandliki for the
Respondent No.1.

CORAM : SANDEEP K. SHINDE J.
DATE : JUNE 27, 2019

ORAL JUDGMENT :

Heard Mr. Patil the learned counsel for the petitioners
and Mr. Patwardhan the learned counsel for the respondent no.1.

2 Mr. Patil, the learned counsel for the petitioners, on
instructions seeks leave to withdraw the petition and placed on
record instructions received from the petitioners. Leave is declined
for the following reasons:

Before adverting to the reasons, let me place on record
dates of events, in the order of their occurrence between the parties.

3 The co-operative Court in the year 1993 passed judgment and award and as per the award, opponent no.3, predecessor-in-title of the petitioners was directed to hand over vacant possession of the suit premises to the disputant (opponent/respondent no.1 herein). The judgment and award was confirmed by the Co-operative Appellate Court and further by this Court in Writ Petition and the Letters Patent Appeal. That as such, award was put to execution in Regular Darkhast No.170 of 1993. Executing Court disposed of the Regular Darkhast NO.170 of 1993 on the ground that it is not tenable as the award had been modified by the Co-operative Appellate Court. This order of the executing Court was challenged by respondent no.1 before this Court. Vide order dated 26th June, 2009, this Court directed executing Court to execute the award in modified format. Petitioners thereupon filed an application in April, 2012 objecting to the execution of the award on the ground that execution proceedings are not maintainable when the award is modified in appeal. The learned executing Court rejected the said objection against which Writ Petition No.5229 of 2012 before this Court was

filed. This Court dismissed the said writ petition on 15th June, 2012. Yet another application was filed before executing Court objecting to the execution of the award. Petitioners thereupon again filed another Writ Petition No.11794 of 2012 before this Court and this Court clarified that since petitioners are claiming through the judgment debtor, petitioners don't have any independent right to challenge the execution proceedings. Thereupon order passed in Writ Petition No.11794 of 2012 was challenged in Letters Patent Appeal No.321 of 2013. However, Division Bench of this Court dismissed the same by order dated 16th December, 2013. The Apex Court upheld this order in Special Leave Petition No.5123 of 2014. Thereafter, petitioner filed Regular Civil Suit No.449 of 2013 and also applied for interim relief therein seeking stay to the execution proceedings. The trial Court refused to grant the interim relief. This order was challenged in Writ Petition No.11238 of 2014. Petitioners withdrew the petition with liberty to file an application before the Civil Court. On 16th March, 2017, the executing Court issued warrant of possession. Petitioners made a grievance that all pending applications were not

decided by the executing Court before issuing possession warrant and thus, another writ petition no.3673 of 2017 was filed before this Court. This Court thus directed executing Court to decide all the pending applications and the main execution application on or before 1st November, 2017. Executing Court, accordingly, decided all the pending applications and rejected them and as such, ordered to issue possession warrant.

4 Against the order dated 1st November, 2017, petitioners filed Writ Petition No.12951 of 2017 and made grievance that application below Exhibit 298 was not decided. This Court vide order dated 22nd February, 2018 directed executing Court to decide the said application within two weeks. On 8th March, 2018 executing Court rejected the application by a speaking order. This order was challenged in Writ Petition No.3126 of 2018. On 9th October, 2018, this Court dismissed the said writ petition also.

5 Thereafter on 10th October, 2018, petitioner filed an application for dismissal of execution proceedings by stating that respondent no.1 is no more a member of respondent no.8-Society.

Executing Court rejected the said application against which present writ petition is preferred.

6 Thus, dates of events in the order of occurrence between the parties shows that judgment-debtor successfully stalled the execution of the decree passed in favour of the respondent no.1 by adopting one or another proceedings either before this Court and/or by filing large number of applications in the execution proceedings. The Apex Court has time and again held and asked Courts to impose exemplary costs against such petitioners, who are misusing judicial system by filing frivolous petitions due to which judicial system gets “choked” with such litigation.

. In the case of **Dnyandeo Sabaji Naik and Anr. v. Pradnya Prakash Khadekar and Ors. (2017) 5 Supreme Court Cases 496**, the Apex Court has held that liberal access to justice has led to chaos and indiscipline and there should be an institutional approach to penalise people, who filed frivolous petitions just to delay the litigation and justice delivery system. It is further held that strong message was needed to send out to litigant informing them

that they have to pay the price for pursuing frivolous petitions to ensure that others should not venture along the same path in the hope of judicial leniency and that exemplary costs were inevitable and even necessary.

7 Thus, taking into consideration chronology of events and the numerous frivolous applications filed by the petitioners in the execution Court has deprived the decree-holder from enjoying fruits and benefits of suit premises for over 27 years. More so, it cannot be ignored that most of the applications and the petitions filed before this Court were only with a view to drag execution proceedings on one or another count knowing fully that objections were frivolous and not sustainable.

8 It may be stated that this Court in the Writ Petition No.5229 of 2012 which was disposed of in June, 2012 has observed in paragraph 8 thus,

8 In my view, in the light of the order passed in Writ Petition No.3743 of 2006 the said submission cannot be countenanced as it is for the executing court to execute the decree as modified by the higher court. In the facts of the present case where the modified decree has been confirmed by this Court, the execution of the decree cannot be stalled on the ground urged by the Judgment

Debtor. It appears that in the past also applications were filed by the Judgment Debtor as can be seen from the impugned order to question the executability of the decree on the ground that the modified decree is not sought to be executed. In my view as indicated above, the present petition is one more attempt by the Judgment Debtor to stall the execution of the decree on some pretext or the other. In that view of the matter, no case for interdiction in the Writ Jurisdiction of this Court under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.”

. The aforesaid observations were conveniently ignored by the petitioners and made repeated attempts to stall the execution proceedings by filing various applications as stated hereinabove. Now so far as the present petition is concerned, it appears petitioners approached Co-operative Housing Society wherein the suit flat is situated and produced on record resolution dated 29th September, 2018 passed by the said society. Relying on this resolution, petitioners filed, another application under Section 47 of the Code of Civil Procedure, 1908 with a prayer to dismiss the execution proceedings on the ground that membership of the decree holder has been cancelled by the housing society. Petitioners kept this application pending deliberately and filed this petition contending

that pending application the learned executing Court orally directed to execute the possession warrant in terms of the order dated 1st November, 2017. However, in the body of the petition in paragraph 45 and also in the prayer clause, they have challenged the order dated 15th October, 2018 which reads thus '*Last chance given to decree holder to file say during the next date in the interest of justice in default appropriate orders will be passed.*'

. Obviously, the order dated 15th October, 2018, which is reproduced hereinabove has nothing to do with the apprehension expressed in paragraph 45 of the petition and has nothing to do with the oral direction allegedly issued by the Court for executing possession warrant. The learned counsel for the petitioner could not explain as to how the order dated 15th October, 2018 could be subject to challenge. Therefore, it is another attempt not only to protract execution proceedings but also an attempt to mislead this Court. It also appears that the Ambai Defence Co-operative Housing Society Limited, Kolhapur where the suit flat is situated, has also filed an application in the execution proceedings and requested the

Court to dismiss the execution proceedings.

9 Considering the facts of the case, this Court declines leave to withdraw the petition. However, only dismissal of the petition may not serve the purpose unless the petitioner is saddled with appropriate cost. The Apex Court in the case of ***Ramrameshwari Devi and Ors. v. Nirmala Devi and Ors. (2011) 8 Supreme Court Cases 249*** has held '*imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.*'

10 That for the reasons stated here-in-above, petition is dismissed. Petitioners are directed to deposit cost of Rs.5 Lakhs in this Court within a month from today. If the cost is not deposited, the Collector, Kolhapur shall recover the cost as arrears of land revenue. Executing Court is directed to execute the possession

warrant in terms of the order dated 1st November, 2017 passed in Regular Darkhast No.111 of 2010 and forward compliance report to registry on or before 24th July, 2019. Office to place this matter before this Court for compliance of this order on 29th July, 2019.

(SANDEEP K. SHINDE, J.)