

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5391 OF 2017

(NARESH MAHADEORAO BOHARI...VS.. KAMLABAI RAMBHAU LAVALE THR. LR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri J.B.Gandhi, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 19, 2019.

None appears for the respondent though served.
Heard learned Advocate for the petitioner.

The respondent had filed Regular Civil Suit No.82 of 2011 praying for decree for permanent injunction restraining the present petitioner (defendant in that civil suit) from creating any obstruction in the approach way for reaching the field of the plaintiff. This civil suit came to be decreed and the order of permanent injunction restraining the defendant from creating any obstruction in the approach way for reaching the field of the plaintiff came to be passed. The defendant accepted the judgment and decree, inasmuch as it was not challenged in appeal. However, the defendant continued to obstruct the approach way of the plaintiff and therefore, the plaintiff/decreed holder was constrained to file execution proceedings which came to be registered as Regular Darkhast No.20 of 2016. In spite of service of notice/ summons of the execution proceedings, the judgment debtor failed to appear before the Court and therefore, on application filed by the decree holder, the executing Court issued arrest warrant against the Judgment Debtor. The Judgment Debtor was produced before the Court on 29th July

2017 in execution of the warrant. From the order passed by the executing Court on 29th July 2017 it appears that the Judgment Debtor was not represented by any lawyer and in answer to the queries of the Court, the Judgment Debtor had refused to permit the decree holder to use the approach way to enable the decree holder to approach his field. Hence, the executing Court passed order on 29th July 2017 directing detention of the Judgment Debtor (present petitioner) in civil prison for 30 days. Subsequently, the Judgment Debtor filed application (Exh.17) seeking review of the order dated 29th July 2017. The Judgment Debtor also filed an affidavit stating that he would not obstruct the approach way of the decree holder. However, considering the over all conduct and attitude of the Judgment Debtor, the executing Court rejected the application (Exh.17). Being aggrieved in the matter, this petition is filed by the Judgment Debtor.

While issuing notice to the respondent, by order dated 16th August 2017, this Court granted an interim order and directed that the petitioner be released from civil prison on furnishing bail.

After hearing the learned Advocate for the petitioner and examining the facts of the case, I am of the view that the impugned orders are proper and do not require any interference by this Court in the extraordinary jurisdiction. It cannot be said that the executing Court has mechanically directed detention of the Judgment Debtor in civil prison. The executing Court is required to adopt the approach as reflected in the impugned orders because of the arrogance and attitude of the Judgment Debtor. I am conscious that the Courts should adopt lenient view in matters of this type, if the Judgment Debtor tenders apology

and shows repentance. However, in the facts of the present case, I am of the view that showing any lenient view would be harmful for maintenance of the Rule of Law.

I find that the executing Court has rightly exercised the jurisdiction conferred by Order XXI Rule 32 of the Code of Civil Procedure. I see no reason to interfere with the impugned order.

The writ petition is **dismissed** with costs quantified at Rs.Ten Thousand to be paid by the petitioner to the respondent.

The amount of Rs.Ten Thousand shall be deposited by the petitioner before the executing Court within two months and affidavit of compliance shall be filed on the record of this petition. On deposit of such amount, it be given to the respondent/decreed holder.

If the petitioner fails to deposit the amount, the executing Court shall ensure its recovery, if required, by coercive means.

The petitioner/Judgment Debtor is granted time till 11th October 2019 to surrender. Till then, any coercive action shall not be taken against the petitioner.

If the petitioner fails to obtain appropriate orders till 11th October 2019, the executing Court shall ensure implementation/ execution of the order passed by it on 29th July 2017.

JUDGE