

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 846 OF 2012

Aurangabad Textile Mills.,
A Unit of National Textile Corporation
(South Maharashtra) (Now – Western Region),
Kotwalpura, Aurangabad,
through its General Manager

PETITIONER
(Ori. Decree-Holder)

VERSUS

1. The Vijayalaxmi Co-operative Housing Society Ltd., Shukleshwar Mandir Parisar, Fazalpura, Collector Office, Aurangabad, through its Secretary
2. Babanbai Parasram Jadhav,
Age : 72 years, Occu. Household,
R/o H. No.4-16-123, CTS No.2751,
Kotwalpura, Mill Corner, Aurangabad
3. Anand s/o Parasram Jadhav,
Age : 53 years, Occu. Not known,
R/o as above
4. Jayant s/o Parasram Jadhav,
Age : 50 years, Occu. Not known,
R/o as above
5. Bhaarat s/o Parasram Jadhav,
Age : 48 years, Occu. Not known,
R/o as above
6. Anand s/o Parasram Jadhav,
Age : 53 years, Occu. Not known,
R/o as above
7. Ganpat s/o Parasram Jadhav,
Age : 41 years, Occu. Not known,
R/o As above

RESPONDENTS
(Respdt. No.1 is Objection
Petitioner, Respdt.No2.2 to
7 are Judgment-Debtors)

Mr. M.N. Navandar, Advocate for the petitioner
Mr. P.R. Katneshwarkar, Advocate for respondent No.1
Mr. V.P. Narwade for respondent Nos.2 to 5

CORAM : MANGESH S. PATIL, J.

DATE OF JUDGMENT RESERVED : 30.08.2021
DATE OF JUDGMENT PRONOUNCED : 01.09.2021

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Mr. P.R. Katneshwarkar, learned Advocate waives service for respondent No.1 and Mr. V.P. Narwade, learned Advocate waives service for respondent Nos.2 to 5. With the consent of the learned Advocates for the parties, the matter is heard finally at the stage of admission.

3. By invoking the powers under Article 227 of the Constitution of India, the petitioner, which is a decree-holder, is impugning the order dated 24.12.2010, passed by the executing Court on the application (Exh-97) of respondent No.1, thereby allowing the application and directing the objection petition (Exh-85) filed by respondent No.1 to be adjudicated upon on merits in accordance with the procedure contemplated under Order-XXI Rule-97 (*sic*) of the Code of Civil Procedure ("CPC", for short).

4. Mr. M.N. Navandar, learned Advocate for the petitioner submits

that respondent No.1 is a stranger to the litigation whereas by virtue of the wording of Order-XXI Rule 101 of the CPC, it is only the parties to the suit who can file any objection proceeding and the executing Court is not entitled to decide it. The learned Advocate, referring to the facts, also endeavoured to demonstrate as to how the decree has reached finality upto the Supreme Court and the petitioner is entitled to get it executed. According to him, respondent No.1, without having any right, title or interest, is creating obstruction. The learned Advocate would also submit that in fact, respondent No.1 has also filed Special Civil Suit No.141 of 2010, seeking declaration of his title to the very same property but instead of prosecuting it, he has been unnecessarily raising objection to the execution of the decree in favour of the petitioner. No such parallel proceedings can be allowed to be maintained. He would, therefore, submit that ignoring all these circumstances, the learned Judge, by the impugned order, has allowed the objection petition to be heard and decided.

5. Mr. P.R. Katneshwarkar, learned Advocate for respondent No.1 submits that in fact, the order challenged in the petition only directs that the objection petition filed by respondent No. 1 is to be tried and decided in accordance with the provisions of Order-XXI Rules 91 to 103 of the CPC. The matter has become infructuous. He would submit that pursuant to the impugned order, which was passed way back in the year 2010, the objection petition has been taken up for decision. Respondent No.1 has already

examined witnesses and now the matter is awaiting the evidence to be led by the petitioner, if any. He would, therefore, submit that the purpose of filing the petition has already been put at naught since the executing Court has already proceeded to hear and decide the objection petition of respondent No.1.

6. I have carefully perused the impugned order and the record. At the outset, it is necessary to note that the petitioner has nowhere taken any exception to the filing of the objection petition by respondent No.1, much less regarding its maintainability. For that matter, even such an issue was never agitated before the executing Court even while deciding the application (Exh-97), on which the impugned order has been passed. Resultantly, the objection petition (Exh-85) filed by respondent No.1 is still alive. Not only this, but admittedly, the executing Court has already taken it up for decision in accordance with the procedure prescribed under Order-XXI Rules 91 to 103 of the CPC. In a way, the whole purpose of filing the application (Exh-97) has been served to a great extent inasmuch as the executing Court has already started recording evidence and the evidence of respondent No.1 is already closed.

7. Besides, since the objection petition is still pending without there being any objection regarding its maintainability, no fault can be found with the learned Judge of the executing Court in going ahead and deciding its fate on merits.

8. The respondent No.1 has styled the objection petition as one under Order-XXI Rule 97 of the CPC and the error is apparent since that provision enables a decree-holder or a purchaser of a property sold in execution, to resist the obstruction in obtaining possession.

9. A careful perusal of the objection petition (Exh-85) reveals that respondent No.1 is claiming to have derived title to the property on the basis of some sale agreement dated 13.11.1965 and also claims to be in possession of the property pursuant to such deed. The merits of the claim apart, by virtue of provision of Order-XXI Rule 99 of the CPC, if it is apprehending dispossession on the basis of the decree under execution, it is entitled to obstruct its execution by resorting to Order-XXI Rule 99.

10. Mr. Navandar, learned Advocate for the petitioner submits that in view of the wording of Order-XXI Rule 101 of the CPC, it is only the dispute between the parties to the suit, which can be determined and the proceedings under Rule 97 and Rule 99, are not legally tenable. However, when Rule 99 specifically enables a stranger apprehending dispossession pursuant to a decree, which is put to execution, to raise objection, any reference to Rule 101 itself is incorrect. Both these Rules operate in different spheres. Rule 99 only enables a stranger to intervene in an execution proceeding whereas Rule 101, which is mostly in tune with the provisions of Section 47 of the CPC, declares that all the questions between the parties to the suit or their

representatives `relevant for the decision of the applications under Rule 97 and Rule 99', shall be determined by the executing Court and not by way of separate suit. Consequently, the submission of the learned Advocate for the petitioner needs to be simply discarded.

11. Considering all above state-of-affairs, the Writ Petition has no merits and is liable to be dismissed.

12. The Writ Petition is dismissed. The Rule is discharged.

13. It is made clear that the executing Court shall not feel influenced by the observations made in this judgment.

[MANGESH S. PATIL]
JUDGE