

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10982 OF 2021

1. Laxman s/o Deorao Misal,
Age : 65 years, Occu. Pensioner
and Agriculture, R/o at present
House No.1-4-279, Jawahar Colony,
Nagar Naka Beed, District Beed,
permanent r/o Khokarmoha,
Tq. Shirur (Kasar), Dist. Beed

2. Namdeo s/o Ramrao Misal,
Age : 41 years, Occu. Business,
R/o as above

PETITIONERS

(Orig. Judgment Debtors/Defendants)

VERSUS

Vishwanath s/o Kisanrao Gupte,
Age : 55 years, Occu. Contractor,
R/o Ayodhya Nagar, Beed,
Now at Punam Galli, Beed

RESPONDENT

(Orig. Decree Holder/Plaintiff)

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Mr. Suhas R. Shirsat, Advocate for the petitioners

Mr. Rupeshkumar C. Bora, Advocate for the respondent

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CORAM : MANGESH S. PATIL, J.

DATE : 20.10.2021

PER COURT :

Heard both the sides finally at the stage of admission. At their request, the matter is being disposed of finally.

2. The petitioners are the judgment-debtors, impugning the order passed by the executing court directing a possession warrant to be

issued under Order XXI Rule 35 of the Code of Civil Procedure (“Code”, for short) pursuant to a compromise decree which admittedly has reached finality upto the Supreme Court.

3. The learned Advocate for the petitioners emphasizes that though the suit was for injunction simplicitor, the compromise that was allegedly entered into consisted of several terms and conditions beyond the purview of the suit. Besides, even in terms of the said compromise, it is a matter of development of a property wherein the respondent has undertaken to carry out construction of a building. Even in terms of the compromise, the petitioners are entitled to retain two flats from the ground floor. The effect of directing a possession warrant to be issued would have a drastic consequence of them being required to vacate the premises in their possession. The learned Advocate would further submit that even otherwise the construction is to be carried out by the respondent pursuant to the building permission granted by the Municipal Council, which has already lapsed. Even the terms of contract for its execution as agreed in the compromise has already expired long back. The learned Advocate would further submit that independently, the petitioners have also filed a suit and filed an application under the provisions of Order I Rule 29 of the Code for stay to the execution. In spite of all these facts and circumstances having been brought to the notice of the executing court, by the impugned order, the possession warrant is directed to be issued.

4. I have carefully considered the papers. As far as the challenge to the compromise decree is concerned, it would not lie in the mouth of the petitioners now to agitate anything in that respect for the sole reason that it has now reached finality in the form of dismissal of the Special Leave Petition by the Supreme Court.

5. So far as the objections now being agitated before me, touching the manner in which the terms and conditions of the compromise can be put to execution, suffice for the purpose to observe that the petitioners raised all these objections before the executing court by preferring an application under Section 47 read with Section 151 of the Code. It is a matter of record that that application was rejected by the executing court by the order dated 22.09.2017.

6. Faced with the situation, even the petitioners filed a separate suit bearing Regular Civil Suit No.801/2016 raising all these issues which are now being sought to be raised before the executing court as also before this Court. Even that application (Exh-48), preferred under Order XXI Rule 29 of the Code was rejected by the executing court by a detailed order dated 22.09.2017. Admittedly, for last more than almost four years, the petitioners have not challenged the orders rejecting their objection under Section 47 or preferred under Order XXI Rule 29 of the Code.

7. It is at that stage that an innocuous request was made by the respondent/decreed-holder requesting the executing court to issue a

possession warrant under Order XXI Rule 35 of the Code. By the impugned order, the executing court has directed that such a warrant to be issued.

8. It is under these peculiar facts and circumstances, when all the objections raised by the petitioners before the executing court as also before this Court have been turned down and have even reached finality, the selfsame objections cannot be allowed to be agitated once again before this Court in the form of present writ petition.

9. The Writ Petition is dismissed.

10. At this stage, the learned Advocate for the petitioners requests that the petitioners may be protected for the time being at least for couple of weeks to enable them to approach the Supreme Court.

11. In fact, the petitioners have never been protected by any court at least since the year 2017 when their objections were rejected. Therefore, they are not entitled to any further concession. The request is rejected.

[MANGESH S. PATIL]
JUDGE