

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7438 OF 2021

Smt. Yamunabai Kisanrao Shinde
(Since Deceased) Through LRs. .. Petitioners

Vs.

Kum. Swati Khanderao Shinde
@ Ishani Surendra Deshmukh
(Since Deceased) Through LRs.
& Ors. .. Respondents

...

Mr. S.C. Wakankar for the petitioners.

Mr. Kiran C. Wagaj with Mr. Purshottam for respondent Nos.1A
and 1B.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 16TH NOVEMBER, 2021.

P.C:-

1. This is a classic case, where once again the decree-holder has been kept away from the fruits of the decree granted in his favour in a civil suit filed in the year 1971. The suit filed by the plaintiffs sought reliefs of declaration and specific performance. It was specifically prayed by the plaintiffs that the defendants

have no right to keep the business because there is breach of conditions of the registered agreement and re-conveyance was sought to be effected in respect of the business in the name of the plaintiffs, which was run under the name and style of “Ganu Shinde Cold Drink House”. The account of the business was also sought by the plaintiffs along with net profit. Possession of the suit property was also claimed by prayer clause (3) in the suit.

2. The aforesaid suit is decreed on 04/05/2000 and a declaration is given that the defendants have breached the conditions of the agreement and the plaintiffs were held entitled to get the re-conveyance of the Deed from the defendants in respect of the business “Ganu Shinde Cold Drink House” on or before 20/06/2000. The preliminary decree in respect of the settlement of account was directed to be drawn and separate enquiry for fixing the mesne profits was also directed to be initiated.

3. More than two decades with the decree in hand, the plaintiffs are still wondering as to why the fruits of the decree have been denied to them.

4. Recently, the Hon’ble Apex Court in **Rahul S. Shah v. Jinendra Kumar Gandhi & Ors.** reported in **(2021) 6 SCC 418**, had taken note of the delay in execution of the decrees, which is

a normal phenomena and was constrained to issue directives so that the suits and execution proceedings shall be concluded in a time bound manner and a specific direction, which warrants my attention and which should also be brought to the attention of the executing court is, paragraph No.42.12, where the Apex Court has directed that the executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

5. The regular Darkhast bearing No.65 of 2004 is still awaiting its culmination. My attention is invited to multifarious attempts at the instance of the judgment debtor to delay the execution of the decree and this is also set out by the learned judge, when he has rejected the applications from time to time. However, I need not deal with the entire gamut of the said Darkhast, which include various applications filed by the decree-holder as well as the judgment debtor and even the obstructionist i.e. the sisters of the judgment debtor.

6. Suffice it to mention that the petition is filed being aggrieved by an order passed by the executing court below Ex-214, Ex-255 and Ex-256, under which the learned Judge has not entertained the judgment debtor's claim for advancing oral arguments in support of the applications which have been contested in the said suit. Pertinent to note that by passing an

order below Ex-232 on account of pandemic, learned Judge directed the parties to file written arguments before proceeding to decide Ex-232, Ex-216 and Ex-214. Accordingly, written arguments were filed and the applications were decided by a common order on 22/09/2021. Under the said order, the applications filed below Ex-216 by the judgment debtor and his LRs below Ex-232 came to be rejected. The application for issuance of possession warrant filed below Ex-214 by the decree-holder was allowed and possession warrant was directed to be issued after 31/10/2021.

It is informed by learned counsel for the other side that the order passed below Ex-216 and Ex-232 are already carried in appeal by the judgment debtor/obstructionist.

7. Another milestone was attained when on 22/09/2021, the third party as well as the judgment debtor moved an application vide Ex-255, wherein it was prayed that they should be allowed to advance oral arguments before deciding the applications below Ex-216, Ex-232 and Ex-214. The said application was strongly opposed by the decree-holder as it was filed by way of delay tactics and the learned Judge, after recording that the proceedings were adjourned on 13 dates by the judgment debtor to bring their written arguments on record, further records in the order that the application is moved by the judgment debtor at a time when the matter is fixed for order. Left with no option, to avoid the consumption of time by decree holder, which was

merely an attempt to delay the proceedings, learned Judge on 22/09/2021 rejected the application.

8. The petitioner, is today aggrieved by the orders passed in Ex-214, Ex-255 and Ex-256.

The decree-holder has been patiently waiting his share of relief for more than two decades. On a suggestion being made by the court that if they are allowed to advance their oral arguments on the three applications below Ex-216, Ex-232 and Ex-214, learned counsel for the respondents fairly concedes to the fact that if this court directs that the said applications will be decided by the executing court within a time frame, they can postpone the availing of the fruits, since the possession warrant is directed to be issued after 31/10/2021 and inspite of the said order, till the date they have nothing in their hands.

Considering this fair statement from the decree holder, I deem it expedient to direct the executing court dealing with Darkhast No.65 of 2004 to afford an opportunity of hearing as claimed by the judgment debtor as well as the obstructionist, who have moved an application vide Ex-216. However, I cannot ask the decree holder to wait for a longer time and though I am conscious of the fact that the learned Judge dealing with the Darkhast may be already pre-occupied, in the wake of the latest decision of the Apex Court in **Rahul Shah (supra)**, I deem it expedient to direct the executing court to take up the said applications on 22/11/2021 and by conducting the hearing on

day-to-day basis, by affording opportunity to both the parties to submit oral arguments, conclude the hearing on said exhibits on or before 26/11/2021. It is made clear that none of the parties will seek any adjournment on these dates and the learned Judge shall proceed with the applications without seeking any written arguments by either side.

Upon such a direction being issued, learned counsel for the petitioner states that the appeals filed by him challenging the order passed in applications below Ex-232 and 216 shall be withdrawn.

9. Needless to state that since the executing court is directed to afford an opportunity of hearing on applications below Ex-232 and Ex-216, possession warrant shall not be given effect to till the time, the learned Judge decides the applications, as directed aforesaid i.e. on or before 26/11/2021.

10. The writ petition is disposed of in the aforestated terms.

[SMT. BHARATI DANGRE, J.]