

Sneha
N.
Chavan

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

CIVIL REVISION APPLICATION NO. 24 OF 2020

Bhimashankar Dagade Shete
V/s.

.. Applicant

Vijaykumar Jagdishchandra Wai & Ors.

.. Respondents

Mr. Sujeet Bhugade for the Applicant.

Mr. Sarthak Diwan i/b Ashutosh Kulkarni for the Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : 15th FEBRUARY, 2021

PC.

1. The challenge in this revision application is to the orders dated 29.06.2019 passed by the Executing Court in Regular Darkhast No. 27 of 2015 below Exhibit 18 and Exhibit 39. By the impugned order below Exhibit 39, the Executing Court has disposed of Dharkhast with liberty to the applicant (decree holder) to file a fresh execution after decision of the application Exhibit 18. The applicant is the landlord.

2. A suit came to be filed by the applicant against the judgment debtor No.1 in which a consent decree was passed on 21.04.2015.

The applicant sought the execution of the said decree in which the contesting respondent (judgment debtor No.2) filed application Exhibit 18 purportedly under Order XXI Rule 97 of the Code of Civil Procedure, 1908 on the ground that the premises were tenanted to a partnership firm of which the judgment debtor No.2 is a partner. It was also contended that the judgment debtor No.2 is in actual possession of the suit premises.

3. It appears that the executing court by an order below application Exhibit 18 directed the same to be registered. By a separate order of even date below application Exhibit 39, the Darkhast is disposed of as aforesaid.

4. The Application Exhibit 39 was filed by the judgment debtor No.2. By that application, all that the judgment debtor No.2 prayed was to register the application under Order XXI Rule 97 at Exhibit 18 as per Rule 337 and 339 of the Civil Manual. It can thus be seen that all that the judgment debtor No.2 required was to decide his application under Order XXI Rule 97, which has to be decided in the execution application. It is trite that all the questions including questions relating to right, title or interest in the property, arising between the parties have to be decided by the Executing Court as

per the provisions of Rule 101 of Order XXI of Code of Civil Procedure, 1908. It is, therefore, difficult to see as to how the execution application could have been disposed of.

5. In the result, the revision application succeeds. The impugned orders dated 29.06.2019 below application Exhibit 18 and Exhibit 39 are hereby set aside.

6. The execution application is restored to file, for disposal according to law alongwith application Exhibit 18.

7. The rival contentions of the parties are left open.

8. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.