

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.203 OF 2018**

Ramanand Raghunath Prajapati & Anr. .. Petitioners

Versus

Hubaidevi Sitaram Bhagat & Ors. .. Respondents

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Mr.Chintan Y. Shah for the Petitioners.

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**CORAM: BHARATI DANGRE, J.
DATED : 4th OCTOBER, 2021**

P.C:-

1. Heard learned counsel for the Petitioners.

2. Regular Civil Suit No.885 of 1996 was filed by Smt.Hubaidevi Bhagat and her minor daughter, seeking possession of suit property and injunction to restrain the Defendants from alienating the suit property. The said suit was decreed by judgment and order dated 10/11/2010 passed by the 6th Joint Civil Judge, Senior Division, Thane.

On the suit being decreed, the Defendants were directed to deliver the possession of the suit property to the Plaintiffs within three months from the date of passing of the decree. The Defendants were also restrained from alienating the suit property to anybody in any manner.

3. When the execution proceedings were registered in form of Regular Darkhast No.51 of 2014, present Petitioners filed an application under Order 21 Rule 97 of the C.P.C., alleging that one Chhotelal Raghunath Prajapati is the co-owner of Room No.556 and an obstruction was raised in the execution proceedings, stating that the Applicant has undivided 2/3rd share in the said Room and by the said decree, the judgment debtor and decree holder are depriving him from his share and, therefore, to protect his right and interest in the form of undivided share, the application came to be moved. Similar such application came to be filed by Dulari Shriram Prajapati.

4. Learned Judge, by a detailed order passed on 09/11/2017, considered the conspectus of the applications filed under Order 21 Rule 97 and recorded that while execution proceedings were pending and, the possession warrants were not being issued, the Obstructionists appeared *suo motu* by filing applications vide Exhs.12, 17 and 26, which were strongly contested by the decree holder. Referring the decision of the Bombay High Court in case of Avinash Uttam Kadam and Ors. Vs. Hajira Begum Nisar Ahmad and Ors.¹ wherein it is recorded that when an application is sought to be moved under Order 21 Rule 97, if there was no separate application preferred by the decree holder under Order 21 Rule 97 for complaining of such resistance or obstruction made by the Obstructionists, the Executing Court could not have passed a decree for possession against the Obstructionists. Referring to the said dictum flowing from the

¹ 2016(3) ALL MR 156

decision, the learned Judge has recorded that since the applications filed by the Obstructionists are already replied by the decree holders, they ought to be considered as Applications under Order 21 Rule 97 and, therefore, even the issue of limitation will not arise. In paragraph 7, following observations are made:-

“7. Those observations are decisive and squarely applies to the instant case. Necessarily therefore, filing of separate application for removal of the obstruction by the decree holder cannot be considered to be mandatory. Resultantly, the objection/insistence for filing separate proceeding raised by obstructionist pales into insignificance and has to be nipped in the bud. In view of the discussion (supra), the matter to proceed. Be noted.”

5. When the learned Judge has directed that in view of the observations made in the aforesaid paragraph, the matter to proceed, it is necessarily indicative of the fact that the application shall proceed in accordance with the procedure set out in Order 21 Rule 97 onwards which contemplate the orders to be passed under Rule 98 upon adjudication of such an application. Though it is not specifically worded, the necessary corollary flowing from the discussion in the impugned judgment leads to an irresistible conclusion to the above effect.

In any case, the order has been passed in the year 2017 and it is informed that till today, there is no progress in the adjudication proceedings. Needless to state that the successor of the Judicial Officer, who has passed the order on

09/11/2017, shall read the order in its entirety and will proceed in light of the settled principles relating to the applications filed by the Obstructionists under Order 21 Rule 97 of the C.P.C.

6. The Writ Petition is disposed of with the aforesaid clarification.

(SMT. BHARATI DANGRE, J.)