

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.3304 OF 2020**

Kantilal Jadhavji Rathod and others

Vs.

Smt. Veena Wd/o Wasdeobhai Rathod

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

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Mr. N. L. Jaiswal, Advocate for petitioners.  
Mr. Thakkar, Advocate for respondent.

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 17/09/2021**

Heard Mr. Jaiswal, learned Counsel for the petitioners. The petition challenges the order below Exh.23 dated 23.10.2020 passed in Special Darkhast No.131 of 2019 by the Court below directing the Nazar to pay 10 % of share of the decree holder to the tune of Rs.20,61,786.61/- deposited in the Court, if not withdrawn by her earlier on furnishing two solvent sureties of the like amount to secure the said payment and an affidavit that there was no stay by any Court in the matter.

2. Mr. Jaiswal, learned Counsel for the petitioners submits that the Special Darkhast No.131 of 2019 was filed in pursuance to a decree dated 20.11.2006 passed in Spl.C.S. No.354 of 1996 by the 2<sup>nd</sup> Joint Civil Judge Senior Division, Nagpur, however, in Appeal No. RCA No.555 of 2015, dated 27.2.2020, the judgment and decree dated 20.11.2006 passed in

Spl. C. S. No.354 of 1996, was quashed and set aside and the suit itself was dismissed. However, the plaintiff was held entitled to withdraw the amount of Rs.9,45,611.43/- which was lying in her credit account, if not withdrawn earlier, along with interest accrued thereupon.

3. Mr. Jaiswal, learned Counsel for the petitioners submits that consequent to the appellate order, the decree as passed by the Trial Court no longer exists and therefore, there was no question of levying any execution and the Special Dharkhast No.131 of 2019, though filed earlier could not have continued apart from which the learned lower Court could not have passed the impugned order at all, therein.

4. Mr. Thakkar, learned Counsel for the respondent submits that the judgment of the Trial Court granted certain benefits to the respondent as well as the petitioners, and therefore, the respondent was entitled to levy the execution in which the learned Trial Court has passed the impugned order.

5. No doubt, till the time the decree as passed in Spl.C.S. No. 354 of 1996 was alive, an execution for its enforcement was maintainable, however, once a decree has been set aside by the Appellate Court in toto and the suit itself has been dismissed, there is no question whatsoever of the execution

proceedings to continue in view of which, Spl Darkhst No.131 of 2019 could not have been prosecuted or continued by the respondent. So also, the learned executing Court, could not have passed the impugned order, in spite of the Judgment of the Appellate Court dismissing the suit having been brought to its notice which is indicated in para 5 of the impugned order.

6. In that view of the matter, the impugned order cannot be sustained and the same is quashed and set aside. Exh. 23 is accordingly dismissed and it is held that in view of the Judgment in Appeal RCA 555 of 2015 dated 27.2.2020, the execution proceeding cannot continue.

**JUDGE**

*Sarkate*