

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3567 OF 2021

PETITIONER

Kailashchandra s/o Kedarnath Agrawal,
Aged about 58 years, Occu: Landlord,
R/o Choti Dhantoli, Nagpur.

...VERSUS...

RESPONDENTS

- 1] Kochaveedu Varghese Joseph,
Aged about 60 years, Occu: Business,
Prop. of Western Refrigeration, R/o 301,
Konark Apartments, Dr. Munje Marg,
Opp. All India Reporter, Congress Nagar,
Nagpur.
- 2] George Kochaveedu Verghese,
Aged about 47 years, Occu: Business, r/o
2nd Floor, Indranil Apartments, West Park
Road, Near Mayur Tiles, Dhantoli,
Garden, Dhantoli, Nagpur.

Shri Sureshchandra Mehadia, Advocate for the Petitioner.

CORAM : S.M.MODAK, J.
DATE : 01/10/2021.

ORAL JUDGMENT

1] Heard learned Advocate Shri Sureshchandra Mehadia
for the petitioner/decreed-holder.

2] There are main two prayers. One is to set aside the
order dated 25/08/2021 and order dated 26/08/2021 passed by
the Executing Court in the proceedings of Special Darkhast No.
49/2014. Copies of those orders are filed in this petition. I have
read them.

3] As per the order dated 25/08/2021, the Executing Court has recalled the possession warrant issued against the judgment debtor, whereas as per the order dated 26/08/2021 the order of issuance of warrant was kept in abeyance till 31/08/2021. It was on the basis of order given by this Court. Now, the petitioner do not want to press the relief of setting aside those orders. Secondly the petitioner has pressed for granting relief as per Clause-II. It says about issuing direction to the Executing Court to decide the execution expeditiously.

4] It is also submitted that there is no need to issue notice to respondents. Respondent No.1 is a judgment debtor, whereas respondent No.2 is the objector. It is a cardinal principle that the affected parties need to be heard prior to passing any order. However, if their interest is otherwise protected by giving necessary directions, there is no need to hear them.

5] It is true that the decree of possession is confirmed even by Hon'ble Supreme Court. When possession warrant was issued, the present respondent No.2 took objection under the provisions of Order XXI Rule 97 of Code of Civil Procedure at **Exhibit-45**. The decree-holder gave a detailed reply. The Executing Court directed to frame appropriate issues as per the order passed below **Exhibit No.65**. The correctness of that order was challenged before this Court by way of Writ Petition No. 2027/2018. The said order was set aside and the Executing Court was directed to decide the Objection Petition within four weeks.

6] The Executing Court decided the said objection by

detail order though not within the time limit but on 25/3/2019. The objection taken by respondent No.2 vide Exhibit No.45 was rejected.

7] My attention is also drawn to the order passed below Exhibit No.176 on 22/02/2021. There is a request to issue a warrant of possession. After hearing the judgment debtor and objector, the Executing Court was pleased to order issuance of possession warrant by breaking open the lock of the suit property.

8] My attention is also brought to an order dated 25/08/2021 passed by the learned Adhoc District Judge-1, Nagpur. It was passed in the proceedings of Misc. Civil Application No. 83/2020. In that proceedings, the order passed by the Executing Court on 25/03/2019 below Exhibit No. 45 was challenged. The learned District Judge initially was pleased to pass an order to maintain status-quo. However, the extension was not granted as per the order dated 25/08/2021. The said proceedings are still pending. It is submitted that as on today, there is no stay granted in that execution proceedings.

9] As per the impugned order dated 25/08/2021, the Executing Court was pleased to recall the already issued possession warrant. It was passed on the application of respondent No.2/objector. The main reason for recalling the order is the order of status-quo granted by the learned Adhoc District Judge vide order dated 23/02/2021. In fact, the decree-holder has made a grievance about the passing of an order dated 25/08/2021 behind his back. Whereas, as per the impugned order dated 26/08/2021,

the Executing Court was pleased to kept the possession warrant in absence till 31/08/2021.

10] It is submitted that now the Executing Court is not proceeding with the matter and when the matter was fixed on 23/09/2021, it was adjourned to 22/10/2021. On that date, the decree-holder as per the Pursis brought to the notice of the Executing Court about the directions given by Hon'ble Supreme Court in *Rahul S. Shah V/s Jinendra Kumar Gandhi* reported in *(2021) 6 SCC 418* . After taking an overview of the experience of the functioning of the Executing Court throughout India, the Hon'ble Supreme Court had given certain directions including timely disposal of execution proceedings. **Direction No.42.12 mentions that it has to be disposed of within six months from the date of filing.**

11] In fact, when the petitioner has brought these observations to the notice of Executing Court, at least then the Executing Court ought not to have adjourned the matter for a month. As already, the decree against the judgment debtor is confirmed, whereas the objection of the objector came to be rejected by the Executing Court. Even though it is challenged before the District Court, there is no order of maintaining the status-quo. In view of that, the Executing Court ought to have proceeded further in the matter. So, it cannot be said to be a judicious approach taken by the Executing Court.

12] The facts and circumstances warrant this Court to direct the Executing Court to decide the Execution Proceedings as

early as possible. It is true that proceedings are pending before the District Court by way of Misc. Civil Application No. 83/2020. As mentioned above that Court has not granted stay to execution of any of the order passed by the Executing Court. Hence, there is no hurdle for executing Court to proceed with the execution. Merely, on account of pendency of that proceeding will not debar the Executing Court from proceeding further in the execution (unless those proceedings are stayed). Hence, the following direction.

DIRECTION

- a] The Executing Court is directed to dispose of the Execution Proceedings as early as possible within two months from the date of receipt of this order.
- b] The decree-holder is directed to appear before the Executing Court on 11/10/2021.
- c] The decree-holder is directed to inform both the respondents about these directions by private mode.
- d] The Executing Court to take up the matter on 11/10/2021 and to proceed with the execution by ensuring that there is no other stay order passed by any of the Court.

- e] The Executing Court to hear the judgment-debtor and objector and then to pass the order.
- f] In view of the above direction, the Writ Petition is disposed of.

JUDGE

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