

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

**WRIT PETITION NO. 1153 OF 2021**

Bholanath S/o Panchamal Shrivast, Acting through its authorised  
representative Ravindra S/o Bholanath Shrivast

vs.

Kameshwarprasad S/o Panchamlal Shrivast and another

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Office notes, Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

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Mr. R. S. Giripunje, Advocate for petitioner.  
Mr. A. D. Sonak, Advocate for respondent No.1.

**CORAM : MANISH PITALE J.**

**DATE : 01/07/2022**

**CIVIL APPLICATION (W) NO. 1400 OF 2022 AND  
CIVIL APPLICATION (O) NO. 470 OF 2022**

These are applications to bring on record legal representatives of the petitioner who died during pendency of the present petition and also for condonation of delay.

2. For the reasons stated in the applications, the same are allowed and the applicants are permitted to be brought on record as legal representatives of the original petitioner. The amendment be carried out forthwith.

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Heard learned counsel for the parties.

2. By this petition, the petitioner has challenged two orders passed by the Court below i.e. Court of Additional Judge Small Causes Court, Nagpur (hereinafter referred to as the 'Executing Court').

3. By the impugned order dated 14/01/2020, the Executing Court has rejected application filed by the petitioner i.e. original defendant No.3 (judgment debtor No.3). The objection raised on behalf of the petitioner was rejected. By the impugned order dated 25/02/2021, the Executing Court allowed an application filed on behalf of the respondent No.1 i.e. original decree holder and warrants of possession were re-issued, further empowering the bailiff to execute the warrant by breaking the lock of the suit premises. Police aid was also granted by the said order.

4. The learned counsel for the petitioner i.e. original defendant No.3 submitted that the Executing Court erred in rejecting the application at Exh.15 i.e. the objection filed on behalf of the petitioner. It was

submitted that the decree could not have been executed for the reason that the original defendant Nos.1 and 2 were, in fact, tenants of the petitioner herein and that therefore, the decree directing possession to be handed over to the original decree holder could not be executed.

5. The Executing Court heard the parties at length and found that the decree was passed only against the original defendant Nos.1 and 2, who were tenant and in the facts and circumstances it was recorded that the petitioner herein was only a formal party and no relief was sought against him. As regards the dispute of title in respect of the property, the Court below recorded that the petitioner was free to institute appropriate proceedings in Civil Court.

6. This Court, having perused the material on record, is in agreement with the findings rendered by the Executing Court in the impugned order dated 14/01/2020. In fact, the nature of objection raised on behalf of the petitioner in the present case appears to be a desperate attempt to frustrate the decree, which has been thwarted by the Executing Court in a correct manner.

7. Insofar as the impugned order dated 25/02/2021 is concerned, it is only a consequential order for ensuring the execution of the decree, so that the original judgment debtor Nos.1 and 2 hand over possession to the decree holder in terms of the decree, which has admittedly attained finality. Therefore, no error can be attributed to the said impugned order dated 25/02/2021.

8. In view of the above, it is found that there is no merit in the present writ petition. Accordingly, the writ petition is dismissed.

**JUDGE**