

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

WRIT PETITION NO. 2492 OF 2022

Sau.Vanita d/o Vasant Potfode w/o Chandrashekhar Bobde
through her Power of Attorney Shri Manishbhai Jasbhai Patel

vs.

Snehal s/o Dinesh Patel and others

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

Court's or Judge's Orders.

Mr. V. K. Paliwal, Advocate for petitioner.
Mr. P. W. Potey, Advocate for respondent No.4.

CORAM : MANISH PITALE J.

DATE : 17/06/2022

By this writ petition, the petitioner has challenged order dated 26/04/2022, passed by the Executing Court whereby, the said Court has rejected an application for recalling of an earlier order dated 18/04/2022, passed by the Executing Court.

2. The backdrop in which the Executing Court has passed the said order is that the petitioner along with respondent No.4 and original plaintiff No.1 were parties to a suit which came to be decreed in their favour. The defendants i.e. the judgment debtors were required to obey the decree and handover the possession to the decree holders. On an

application moved by the respondent No.4 as decree holder, on 18/04/2022, the Executing Court passed an order issuing warrant of possession for recovery of the suit property.

3. Although the petitioner is also a decree holder, for some reason, the petitioner moved the aforesaid application for recalling of the said order marked as Exh.46. It was claimed that since the petitioner was put in possession, the decree was indeed satisfied and there was no purpose in continuing with the aforesaid order dated 18/04/2022.

4. The Executing Court took into consideration the nature of the decree passed in the present petition and found that there was no substance in the said application seeking recall of warrant of possession and on that basis rejected the application for recalling of the earlier order.

5. The Executing Court found that the decree was yet to be satisfied and that is the reason why the impugned order has been passed.

6. The petitioner appears to have moved further application before the Executing Court for

keeping the impugned order and the earlier order issuing warrant of possession in abeyance to approach higher Court.

7. The said application appears to have been granted, whereby certain dates were given to the petitioner to take appropriate steps.

8. Mr.Paliwal, learned counsel appearing for the petitioner submits that Executing Court erred in passing the impugned order, in view of the fact that the decree already stood satisfied.

9. On the other hand Mr.Prashant Potey, learned counsel appearing for respondent No.4 submitted that this was a clear case of the petitioner joining hands with the judgment debtors, only to frustrate the decree for the reason that all the claims made by the petitioners were on paper and such tactics ought not to be permitted by the Court. The learned counsel further submits that the decree is clearly not satisfied.

10. This Court is of the opinion that considering the nature of the decree and the manner in which the petitioner has placed certain documents on record, in the backdrop of specific application filed

by the respondent No.4, also a decree holder for the satisfaction of the decree, the Executing Court is certainly mandated and justified in examining and ascertaining whether decree is actually satisfied or not. It cannot be said that merely because the petitioner makes a statement before the Executing Court, concerning a decree wherein the respondent No.4 is also a decree holder that the decree has been satisfied, the jurisdiction of the Executing Court can be taken away. The mandate of the law is that Executing Court shall ensure that the decree as it exists and which has attained finality is taken to its logical end and that the judgment debtors indeed satisfy the decree. The issuance of warrant of possession is only a step towards ensuring such satisfaction on behalf of the Executing Court.

11. Therefore, it can not be said that the Executing Court committed an error in passing the impugned order, whereby an application for recalling of the order issuing warrant of possession was rejected.

12. There is no substance in the present writ petition and accordingly, it is dismissed.