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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4379 OF 2023

Gabu Raising Chavan and Others

PETITIONERS

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....

Mr. Chandrakant V. Thombre, Advocate for the petitioners
Mrs. G. L. Deshpande, AGP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th APRIL, 2023

ORDER :

1. The petitioners are aggrieved by order passed by Third Joint Civil Judge, Junior Division, Paithan below Exhibit-15 in Regular Darkhast No. 16 of 2015, thereby allowing the application filed by the decree holders for grant of police aid.
2. The petitioners are judgment debtors against whom a decree of permanent injunction is passed in Regular Civil Suit No. 45 of 2005. In the execution proceedings, the decree holders moved an application seeking police aid, on the ground that the judgment debtors are not obeying orders of the Court and they are frequently causing obstruction to the decree holders' possession over the suit property. The decree holders want to

construct wire fencing to protect the suit property, but the judgment debtors are not allowing them to do so. Therefore, the decree holders prayed for police protection for construction of wire compound around the suit property.

3. The said application was resisted by the petitioners – judgment debtors contending that they have never obstructed to construct wire compound. The decree holders have not filed any complaint against the judgment debtors with the police. Vague allegations are made in the application and the judgment debtors have filed appeal against the original decree.

4. After hearing the parties, the Executing Court has allowed the application hence, the present petition.

5. Heard learned advocate for the petitioners and learned Assistant Government Pleader for respondents No.1 and 2. Perused the petition memo, annexures and the impugned order.

6. Admittedly, decree of permanent injunction is passed against the judgment debtors. If the judgment debtors had not caused any obstruction, there was no occasion for the decree holders to move such application. The decree holders, in support of the application, have placed on record affidavit as well as the complaint given by them to the Superintendent of Police,

Aurangabad (Rural). If the judgment debtors are not causing any obstruction, they had no occasion to challenge the order granting police protection to the decree holders.

7. Learned advocate for the petitioners, in support of his arguments, has placed reliance on the judgment in the case of **"Nirabai J. Patil V/s Narayan D. Patil" 2004 (1) Mh.L.J. 1058**, wherein learned Single Judge of this Court has held

"It is no doubt that the Police help is an extraordinary mode or procedure to implement the execution of the decree of orders. In other words, Police Help is to be regarded as an extreme step, and as such it should not be recommended unless the Court is fully convinced of the existence of a grave emergency. Therefore, a decree-holder paying for police help has to state whether such help is required either;

(i) because of apprehension of violence or obstruction from judgment debtor himself or at his instance by others or;

(ii) because of conditions of a general character such as the locality where execution will have to be effected being in a disturbed state of a class of people, similarly situated being likely to make a common cause with judgment-debtor and resist execution.

Thus, the special procedure for police help would not be allowed unless there are reasonable ground to suppose that the execution will not be effected without serious danger to public peace, because of apprehension of violence or obstruction from the judgment debtor himself or because of the conditions of general character as such where the execution will have to be done in disturbed stage or a class of people similarly situated being likely to make common cause that the judgment-debtor can resist the execution.

Besides this, in addition to the circumstances enumerated above to grant police help the Court must be fully convinced of the existing of grave emergency and to prevent commission of cognizable offence by the judgment-debtor or on his behalf by any person or a third party.”

8. In the case in hand, the decree holders have made out a reasonable ground that the execution will not be effected without serious danger to the public peace and apprehension of the decree holders of violence or obstruction from the judgment debtors, appears to be well founded.

9. The Executing Court has passed a reasoned order. There is no illegality or perversity in the order impugned in the present writ petition.

10. No case is made out by the petitioners to exercise extraordinary writ jurisdiction to cause interference in the impugned order. Writ petition being devoid of any substance is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE