

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4510 OF 2022

**PUSHPA WD/O ARVIND DIXIT ALIAS PUSHPA D/O RAMCHANDRA
JOSHI
VERSUS
BHASKAR DEVMAN APAR**

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Advocate for Petitioners : Mr. Vikrant S. Palsikar

Advocate for Respondent : Mr. S.J. Salunke

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 20th JUNE, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner takes exception to the order dated 05/04/2022, passed by learned Civil Judge, Junior Division, Sillod, below Exhibit-31 in Regular Darkhast No.07/2018, thereby issuing warrant of arrest against the petitioner.

2. Complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881, bearing S.C.C. No.718/2015, before the learned Judicial Magistrate First Class, Sillod, was compromised before the National Lok Adalat, District Court, Aurangabad, and the petitioner agreed to pay amount of Rs.4,40,000/- to the respondent in two installments i.e. first installment on 15/02/2018 and second installment on 20/03/2018. Since the petitioner failed to pay the said amount, respondent filed

R.D. No.07/2018 for execution of the compromise decree. In the execution proceedings, though the petitioner appeared, she failed to deposit the amount. Respondent, therefore, filed application Exhibit-31 seeking issuance of arrest warrant against petitioner for amount of Rs.4,35,000/-. The said application is allowed by order dated 05/04/2022. Petitioner is aggrieved by this order.

3. Heard learned advocate for petitioner and learned advocate for respondent. Perused the memo of writ petition, annexures thereto, the impugned order and affidavit-in-reply filed by the respondent.

4. Petitioner claims that she is old and infirm lady of 74 years, suffering from various ailments. Many tragedies happened with her one after another. Her institution came to be demolished, she had to look after her ailing husband and son. Her husband expired on 22/04/2021 and then she lost her son on 19/10/2021. Petitioner, thereafter, was infected with Corona virus in the month of April, 2021. She survived, however, her immunity was seriously hampered, hence she is suffering from various health issues.

5. Learned advocate for petitioner was called upon to take instructions as to whether the petitioner is ready to pay the decretal amount, may be by way of installments. Petitioner handed over amount of Rs.11,000/- to her advocate, which he has

forwarded to learned advocate for respondent. Today, he has received Rs.20,000/- from petitioner, which he is handing over to learned advocate for respondent. He submits that due to unending tragedies and the serious health issues, petitioner has no means to pay the decretal amount to respondent.

6. On merits, learned advocate for petitioner assailed the impugned order by placing reliance on Section 56 of the Code of Civil Procedure, which prohibits issuance of arrest warrant against a woman in execution of decree for payment of money. He, therefore, submits that the impugned order is unsustainable and is liable to be quashed and set aside.

7. Learned advocate for respondent supported the impugned order contending that, in spite of compromise decree, the petitioner is not paying the decretal amount to the respondent. Hence, the executing Court is justified in issuing arrest warrant to compel the petitioner to pay the decretal amount.

8. It is apt to consider the relevant provision i.e. Section 56 of the C.P.C. :-

"56. Prohibition of arrest or detention of women in execution of decree for money – Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money."

9. Plain reading of Section 56 makes it clear that the Court is not entitled to pass the order of arrest or detention in civil prison of a woman in execution of a decree for payment of money. Admittedly, the execution proceedings is for recovery of decretal amount and by the impugned order, the executing Court has issued arrest warrant against the petitioner woman. In view of Section 56, the said order cannot be sustained and the same is liable to be quashed and set aside.

10. In the result, writ petition is allowed.

11. The impugned order dated 05/04/2022, passed by learned Civil Judge, Junior Division, Sillod, below Exhibit-31 in Regular Darkhast No.07/2018, is hereby quashed and set aside.

12. Petitioner is directed to appear before the executing Court on 10/07/2023.

(NITIN B. SURYAWANSHI, J.)