

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4662 OF 2022

Akhtarunnisa Salamtulla Kidwai
and others

.... Petitioners

Versus

Sultana Farja Ali
and others

.... Respondents

.....

Mr. P.V. Bodke Patil, Advocate for the Petitioners

Mr. Chaitanya Deshpande, Advocate h/f Mr. C.R. Deshpande,
Advocate for Respondent Nos.1 to 3

Mr. Amol S. Sawant, Advocate for Respondent Nos.4 and 5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JUNE, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioners take exception to the order passed by the learned Civil Judge, Senior Division, Dhule, below Exhibit 40/D in Regular Darkhast No.40 of 2021.

2. Respondents/plaintiffs filed Regular Civil Suit No.79 of 2011 for declaration and possession of the suit property. On 17/11/2018, the suit was decreed by the Trial Court. The petitioners unsuccessfully challenged the judgment and decree of the Trial Court by filing Regular Civil Appeal No.215 of 2018. Second Appeal No.619 of 2021 filed by the petitioners was

dismissed on 11/01/2022. After the decision of this Court in Second Appeal, the decree holders/respondents filed Regular Darkhast No.40 of 2021 for execution of the decree passed in their favour.

3. The petitioners filed application in Regular Darkhast on the ground that decree passed in favour of the plaintiffs is subject matter of Petition for Special Leave to Appeal, and therefore, the execution petition may be adjourned. By filing application Exhibit-40/D, the decree holders prayed for issuance of possession warrant of the suit property with police aid. The petitioners objected to issuance of possession warrant. The said application came to be allowed by the order impugned in the present petition.

4. This Court at the time of issuance of notice, by considering the fact that Petition for Special Leave to Appeal filed by the petitioners is heard for admission in the Apex Court, and by relying on the decision of Single Judge of this Court in *Bhikam Singh Rajpur Vs. Priti Kishor, 2007 (3) BCR 279*, granted stay in favour of the petitioners, thereby staying the impugned order passed below Exhibit-40.

5. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the writ petition memo, annexures thereto, impugned order and the citations relied upon by the learned advocate for the petitioners.

6. Learned advocate for the petitioners has fairly submitted that the proceeding filed by the petitioners in the Apex Court is dismissed vide order dated 11/11/2022.

7. Admittedly, the suit is decreed in favour of the respondents, and execution of decree is sought by filing Regular Darkhast. In that view of the matter, the prayer for issuance of possession warrant made by respondents is rightly allowed by the Executing Court on the ground that the decree contains specific city survey number of the suit property, and therefore, the suit property can be identified on the basis of city survey number, the boundaries, therefore, are not required to be stated when specific city survey number is mentioned.

8. There is no substance in the argument of learned advocate for the petitioners that, there was no occasion for the Executing Court to grant police aid for execution of

possession warrant, and possession warrant has to be granted in only in exceptional circumstances. Reliance placed on by the learned advocate for the petitioners in *Ratnabai W/o Narayanrao Naik and another Vs. Satwarao S/o Narayanrao Naik, 1995(1) Mh.L.J. 529*, is unacceptable as the said decision is rendered in different facts.

9. In view of the aforestated facts, there is no illegality or perversity in the order impugned in the present petition.

10. The writ petition being devoid merit is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane