

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

**WRIT PETITION NO. 9793 OF 2022**

Rajendra Uttam Patil

.. Petitioner

**Versus**

Lalita Rajendra Patil

.. Respondent

Shri Vinesh Solshe, Advocate h/f Shri Mahesh H. Patil, Advocate  
for the Petitioner.

The Respondent sole is served.

**CORAM : SHARMILA U. DESHMUKH, J.  
DATE : 02ND JANUARY, 2023.**

**FINAL ORDER :**

. The petitioner is aggrieved by order dated 17<sup>th</sup> May, 2022  
passed by Family Court, Dhule, below Exhibit 33 and 36 in R. D.  
No. 06 of 2019.

2. Heard learned counsel for the petitioner.

3. By order dated 23<sup>rd</sup> September, 2022, this Court issued  
notice of final disposal to the respondent. Office noting shows  
that the respondent is served with the notice of final disposal.  
None appears for the respondent.

4. Considering limited nature of controversy, petition is taken  
up for final disposal.

5. Pursuant to a decree passed in Spl. C. S. No. 104 of 2011 by  
the Civil Judge Senior Division, Dhule there was enhancement of

maintenance granted to the respondent, which was the subject matter of R. D. No. 06 of 2019 before the Family Court, Dhule. The petitioner filed an application below Exhibit 33 and pursis below Exhibit 36 raising an objection to the jurisdiction of the Family Court Dhule to execute the decree passed in Spl. C. S. No. 104 of 2011. By the impugned order said application was rejected by the Family Court, Dhule holding that the Family Court has jurisdiction to proceed with the execution proceeding filed by the decree holder.

6. Learned counsel for the petitioner submits that, the earlier execution proceeding which was taken out by the respondent was transferred to the Court of Civil Judge Junior Division, Sakri and, therefore, the present execution proceeding also ought to have been initiated or transferred before the Civil Judge Junior Division, Sakri. He would urge that the reason why present execution proceeding has not been filed before the Civil Judge Junior Division, Sakri is that in the earlier execution proceeding the petitioner has paid excess amount of maintenance and in order to avoid the adjustment of the said amount, the respondent has deliberately filed the present execution proceeding before the Family Court at Dhule. In support of his contention that the Family Court at Dhule does not have jurisdiction to entertain the execution proceeding, he has invited attention of this Court to the provisions of Section 38 of the Code of Civil Procedure, 1908 (for short "Code"), which provides that the decree may be executed either by the Court which has passed it or by the Court to which it has been sent for execution and would urge that since the decree has not been sent for execution to the Family Court at Dhule, the Family Court did not have the jurisdiction to

entertain the execution proceeding.

7. I have considered the submissions raised by the learned counsel for the petitioner.

8. Order XXI of the Code deals with the execution of the decrees and orders and Order XXI Rule 10 of the Code provides that where the holder of the decree desires to execute the decree, the decree holder is required to apply the Court which has passed the decree or if the decree has been sent to another Court then to such Court application is required to be made. In the present case, the decree has been passed by the Civil Judge Senior Division, Dhule. Subsequent to passing of the decree, the jurisdiction of the Civil Court in respect of matrimonial matters came to be vested in the Family Court Dhule and it is the Family Court, Dhule which now has the jurisdiction to deal with the matrimonial matters. In this behalf, it is necessary to refer to the provisions of Section 18 of the Family Courts Act, 1984 (for short "Act of 1984") which empowers the Family Court to execute the decree or order and in particular Sub Section (3) of Section 18 of the Act of 1984, which provides that the decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution.

9. The issue in the present case centres around the Court which passed the decree, in as much as the petitioner claims that the Civil Judge Senior Division, Dhule having passed decree, Family Court, Dhule will not have jurisdiction. I am unable to accept the contention raised by the petitioner. Section 38 of the

Code provides that the decree may be executed by the Court which has passed it and the definition of the Court which passed a decree is contained in Section 37 of the Code, which reads as under :

**CODE OF CIVIL PROCEDURE, 1908**

1. ....
2. ....

**37. Definition of Court which passed a decree.**— The expression “Court which passed a decree,” or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

10. Perusal of Sub Section (b) of Section 37 of the Code provides that where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which if the suit wherein the decree as passed was instituted at the time of making the application for execution of the decree would have jurisdiction to try such suit. After the establishment of Family Court, the Civil Judge Senior Division, Dhule has ceased to have the jurisdiction in matrimonial matters and the jurisdiction now vest in the Family Court, which would have the jurisdiction to execute the maintenance decree. There is no question about compliance of provisions of Order 21 Rule 6 of the Code as the Court which passed the decree would mean the Family Court at

Dhule.

11. In view thereof, I am not inclined to interfere with the impugned order dated 17.05.2022 passed by the Family Court Dhule below Exhibit 33 and 36 in R. D. No. 06 of 2019. Writ petition is devoid of merits. Same is accordingly dismissed. There shall be no order as to costs.

**[SHARMILA U. DESHMUKH, J.]**

*bsb/Jan. 23*