

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 40 OF 2023

Dnyanoba S/o Hari Mali

Applicant

Versus

Sumanbai W/o Dhondiram Kakade & others

Respondents

Mr. A. N. Nagargoje, Advocate for the applicant.

CORAM : R. M. JOSHI, J.

DATE : 17th MARCH, 2023.

PER COURT :

1. This application is filed taking exception to the order passed below Exhibit 25 by the Executing Court in Regular Darkhast No. 13/2015.

2. Judgment Debtor No. 1 had filed an application Exhibit 25 for dismissal of the execution proceeding on the ground of limitation. The said application was opposed by the decree holder. The learned Executing Court, by passing the impugned order, dismissed the said application with a finding that in the said case, a preliminary decree was passed by determining the shares of the parties. It is held that said preliminary decree merely declares the rights and shares of the parties and after further inquiry, pursuant

to the directions made in the preliminary decree, final decree is passed. In the case in hand, final decree proceeding is filed for execution of preliminary decree. By referring to the judgment of the Hon'ble Apex Court in the case of Kattukandi Edathil Krishnan and another vs. Kattukandi Edathil Valsan and others, **2022 SCC Online SC 737**, it is observed that the final decree proceeding can be initiated at any point of time and there is no period of limitation for initiation of final decree proceeding.

3. Learned counsel for the applicant places reliance on the judgment of Hon'ble Apex Court in the case of Dr. Chiranjilal vs. Haridas, **(2005) 10 Supreme Court Cases 746**, and submits that in view of the said judgment, the period of limitation would apply and since the present execution proceeding is not initiated within a period of limitation, the same deserves to be dismissed.

4. Perusal of the said judgment indicates that it relates to the case wherein final decree was already passed. Hence, the said judgment has no application to the present case.

5. Considering the fact that there is no final decree, the observations made by learned Executing Court cannot be called to be perverse. In the result, no case is made out by the applicant for causing interference in the impugned order. Application stands dismissed. No order as to costs.

6. Pending application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb