

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.300 OF 2023

Arun Karbhari Pashal & Ors

... Applicants

V/s.

Sanjay Vishnu Wagh & Ors

... Respondents

SHABNOOR
AYUB
PATHAN
ADVOCATE
PUNJAB
1970-2011-11-03
1970-2011-11-03

Ms. Lisa Das i/by Jay & Co, for Applicants.

Mr. Girish R. Agrawal a/w Ms. Naina Boraste, for
Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 3, 2023

P.C.:

1. The applicants are decree holders who filed Execution Petition for execution of decree passed in Regular Civil Suit No.175 of 1999.
2. By the said decree, it was declared that the road situated between city survey Nos.1507 and 1508 is available for plaintiffs to approach their property situated over city survey No.1505. The defendants were directed to remove construction carried out over the suit way within three months.
3. The decree holders filed an Execution Petition bearing Regular Darkhast No.44 of 2013.
4. The Executing Court on an application filed by the decree

holders for appointment of Commissioner rejected the application and held that the decree is not executable as the exact road between city survey Nos.1507 and 1508 is mentioned in the decree and power under Section 152 of the Code of Civil Procedure, 1908 cannot be equated with the power of review.

5. In my opinion, the approach adopted by the Executing Court is contrary to the observations by the Apex Court in the case of **Pratibha Singh And Anr Versus Shanti Devi Prasad And Anr.**, reported in 2003 2 SCC 330. The Apex Court in paragraph 17 has observed as under:

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case — which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.”

6. On reading of the observations by the Apex Court, it is clear that a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of the case. It is pertinent to note that the Apex Court was considered objection being raised by Executing Court regarding description of the suit property. Therefore, in view of judgment of the Apex Court in the case of **Pratibha Singh** (supra), it is necessary that the decree holders be allowed to file application under Section 152 or Section 47 of CPC for ascertaining exact description of the suit property and if such application is filed, the application shall be decided in the light of observations made by the Apex Court in the case of **Pratibha Singh** (supra). Hence, following order:

a) Clause (2) of the order dated 25 September 2019 in Regular Darkhast No.44 of 2013 passed by the Joint Civil Judge Junior Division, Pimpalgaon (B) is quashed and set aside.

b) The Execution Petition restored to the file of Executing Court.

c) The Executing Court shall decide the application of decree holders either under Section 152 or under Section 47 of CPC in accordance with law after giving all parties due opportunity of hearing.

7. The civil revision application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)