

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11387 OF 2016

Suresh Dinkar Patil

...Petitioner

Versus

Chief Executive Officer,
Pune Zilla Parishad, Pune & Anr.

...Respondents

Mr. Kuldeep Nikam for the Petitioner.

Mr. Pankaj Deokar for Respondent Nos.1 & 2.

Coram : Sharmila U. Deshmukh, J.

Date : July 19, 2023.

P. C. :

1. Heard.
2. The challenge in the Petition is of the order dated 17th November, 2015 passed by the Executing Court in Civil Misc. Application No. 469 of 2011 filed under section 47 of the Code of Civil Procedure by the Respondent Zilla Parishad for declaration that the decree passed in Regular Civil Suit No. 655 of 1982 is unacceptable being null and void.
3. Learned counsel appearing for the Petitioner has brought to the attention of this Court copy of the order dated 22nd June, 2023 passed in connected Writ Petition No. 2779 of 2017 in which this Court has held that the execution proceedings are not barred by limitation and had restored the Execution Application being Regular Durkhast No. 134 of 2010. He would further contend that in this Application, the only issue which was required to be

considered is that whether the Decree sought to be put in execution is null and void. He would point out the issues framed in the Execution Application which reads thus:

- “1. Whether the Applicant prov that the decree is unexecutable by reason of it being null and void on the ground of compromise pursis being unauthorized ?
2. Whether the execution petition No. 134 of 2010 is filed within limitation ?
3. What order & decree ?”

4. He would submit that although the issues have been answered in the negative, as regards the first issue is concerned, the Execution Application has been held to be barred by limitation.

5. *Per contra*, learned counsel appearing for the Respondents would submit that the said issue forms part of the issues framed by the Trial Court and that the Execution Application is barred by the Limitation.

6. Considered the submissions.

7. It is not disputed that the proceedings have been filed under section 47 of Code of Civil Procedure by the Respondent Zilla Parishad objecting to the execution on the ground that the decree passed in the Suit No. 655 of 1982 is unexecutable being null and void for the reason that **the counsel for the Respondent -Zilla Parishad** had no Authority to enter into compromise deed on behalf of Zilla Parishad.

The said contention has been negated by the Executing Court. That being so, the Civil Misc. Application No. 469 of 2011 ought to have been dismissed.

8. The second issue which was framed was not required to be framed in view of the earlier Applications which were filed and decided by the Executing Court. Be that as it may. By order dated 22nd July, 2022, this Court has held that the execution proceeding filed in the year, 2010 was within the period of limitation prescribed by Article 136 of the Limitation Act. This court is informed that as of today, the said order has not been challenged by the Zilla Parishad. The operative part of the order holds that the decree passed in the suit bearing Regular Civil Suit No. 655 of 1982 is unexecutable.

9. In view of the above, the impugned order to the extent that it holds that the Execution Petition No. 134 of 2010 is barred by law of Limitation is required to be quashed and set aside. The impugned order to be modified to read that the objection raised by the Zilla Parishad under section 47 of the Code of Civil Procedure and the declaration sought that the decree is unexecutable being null and void is rejected. Writ Petition stands allowed in the above terms.

[Sharmila U. Deshmukh, J.]

This order is corrected as per speaking to the minutes of order dated 9th November, 2023.