

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3242 OF 2023

Rukmini Krishna Thakur.

...Petitioner.

Versus

Dinkar Nilay Shetti and Others.

..Respondents.

Mr. Karl Shroff i/b Mr. Sagar Shahani for the petitioner.
Mr. Milind S. Prabhune for respondent no. 1.

Coram : Sharmila U. Deshmukh, J.

Date : July 4, 2023.

P. C. :

1. Challenging the judgment dated 8th August, 2022 passed by the Jt. Civil Judge, Senior Division, Panvel, District Raigad in an application filed under Rule 97 of Order 21 of Civil Procedure Code, 1908 (for short "CPC"), the Petitioner herein approached the District Judge-3 Panvel in Regular Civil Appeal No.33 of 2022, which came to be dismissed vide order dated 23rd February, 2023 giving rise to the present Petition.

2. The facts of the case discernible from the material on record is that the Respondent no.1 had instituted Special Civil Suit No.569 of 2011, under Section 6 of the Specific Relief Act, 1963 before the

learned Civil Judge, Senior Division, Panvel, against the Respondent Nos.2 to 5.

3. In the special civil suit, Respondent No.1 came with the following case:

Respondent no.2 was carrying on the business of Restaurant and Bar by name "Ajit Palace Bar and Restaurant" at Grampanchayat House No.899, admeasuring 2000 sqr.feet situated at village Kopara, Tal. Panvel District Raigad, within the jurisdiction of Khargar-Kopara Grampanchayat. Pursuant to a leave and license agreement executed in the month of March, 2002, the Respondent No.1 started running the hotel and restaurant under the name and style as "Ajit Palace Bar and Restaurant", for which a security amount of Rs.8,00,000/- was paid to the Respondent no.2. The term of the leave and license agreement was agreed to be for a period of 15 years ending on 31st March, 2017. During the subsistence of leave and license agreement, the Respondent No.2 refused to renew the annual permit of the hotel causing obstruction to the running of the hotel, as a result of which the Respondent no.2 was compelled to shut the hotel business. Even if the Bar and Restaurant was closed still the possession of the premises was with the Respondent No.1 and as there was breach of

conditions of the leave and license agreement, the Respondent no.1 instituted proceedings before the learned District Judge, Raigad-Alibagh being Civil Misc.Application No.33 of 2009, which came to be partly allowed by the learned District Judge and the Respondent No.2 was restrained from interfering with the working of the hotel business. In the Civil Misc. Application No.33 of 2009, the Respondent no.1 being directed to take positive steps for commencing the arbitral proceedings under the Arbitration and Conciliation Act, 1996, the Respondent no.1 instituted Arbitration Petition No.12 of 2010 before this Court for appointment of Arbitrator which came to be dismissed for non-prosecution on 21st January, 2011.

. During the pendency of proceedings before the District Court, Raigad-Alibagh and before this Court, the Respondent No.2 filed Special Civil Suit No.126 of 2010 for recovery of possession of the suit property which came to be disposed of on 7th April, 2011 as unconditionally withdrawn. On 18th March, 2011, Respondent no.2 illegally entered in the said premises by breaking open the lock of the premises which was in possession of Respondent no.1-plaintiff, who was dispossessed without following the due process of law.

4. In Special Civil Suit No.569 of 2011, Respondent No.1 sought the relief of restoration of possession, as also for a declaration that as

Respondent no.1 was illegally dispossessed on 18th March, 2011, the term of leave and license agreement to exclude the period from the date Respondent No.1 was dispossessed till possession is restored.

5. After considering the evidence on record, the learned Civil Judge, Senior Division, Panvel, vide judgment dated 18th March, 2019, passed the following order :

"1. Suit is decreed with cost.

2. Defendants are directed to hand over possession of suit premises to plaintiff within 3 months from the date of this order.

3. In the event defendants fail to handover possession within 3 months, plaintiff is at liberty to get possession through Court machinery."

6. Aggrieved by the decree, Respondent No.5, who was defendant no.4 in the proceedings before the Trial Court, filed Civil Revision Application No.115 of 2012 before this Court, which came to be dismissed on 30th March, 2022, by this Court High Court. As against the order of this Court, a Special Leave Petition No. 86997 of 2022 was filed by Respondent No.5 before the Apex Court which was dismissed on 27th May, 2022.

7. For executing the judgment dated 18th March, 2019, the

Execution Application being Special Darkhast No.33 of 2022 was instituted by Respondent No.1. In the execution proceedings the Petitioner preferred an application under the provisions of Rule 97 of Order 21 of the CPC on 28th July, 2022, claiming that the decree passed in Special Civil Suit No.569 of 2021 was not binding on the Petitioner and that the Petitioner was in possession of the suit premises and for a direction that the Respondent No.1 should not interfere with the petitioner's possession.

8. The case of obstructionist was that she became aware of the execution proceedings on 20th July, 2022, when she saw a notice which was pasted on the front portion of the suit property. The contention is that, upon inquiry, the Petitioner learnt that in the year 2002, the said property was given on leave and license basis by the Respondent no.2-her husband to the Respondent no.1 without her consent. As per the Petitioner, subsequently in the year 2011 the Respondent no.2 handed over the suit property to the Respondent no.5 on leave and license basis and the compensation was being taken by the Respondent no.2. The Petitioner claimed total ignorance about these transactions.

9. The case of the Petitioner, while opposing the execution application, is that the term of leave and license agreement executed

by Respondent no.1 was to expire on 31st March, 2017 and prior thereto the leave and license agreement was executed between the Respondent no.2 and the Respondent no.5. It was contended that as of today, the property is in possession of the Petitioner. It was her contention that the Petitioner was neither a party to leave and license agreement nor to the proceedings instituted by Respondent no.1, and as such, the agreement as well as the judgment is not binding upon the petitioner. Another objection which was raised was that the tenure of leave and license agreement came to an end on 31st March, 2017, and as such, the agreement itself having expired, the possession could not be handed over. The case of the Petitioner is that although this Court had directed Respondent no.5 to handover the possession to Respondent no.1 by 31st March, 2022, the Petitioner is in possession of the premises and, as such, there is no question of handing over the possession to Respondent No 1. Armed with this case, the petitioner has objected to the execution application.

10. Vide order dated 8th August, 2022, the Executing Court rejected the application against which an appeal being Civil Appeal No.33 of 2022 was preferred, which came to be dismissed vide the impugned judgment dated 23rd February, 2023.

11. The claim of the Petitioner was adjudicated by the Executing Court and on the issue of possession of the Petitioner, the Executing Court has held that there was no effort made by the Petitioner to get herself impleaded in the litigation pertaining to the suit property and has disbelieved the case of the Petitioner that she was not aware of the litigation. The Executing Court further considered the material produced on record to claim ownership viz. the assessment extract and observed that the name of the Petitioner was entered in the suit property during the pendency of the dispute and merely by entering the name in the assessment extract does not confer any right and title in suit property. The Executing Court considered the undertaking which was given by the Respondent no.5 regarding handing over of the possession to the Petitioner and observed that the Respondent nos.2 to 5 alongwith the Petitioner are hand in glove in trying to protract the execution to defeat the rights of the plaintiff.

12. The Appellate Court has considered in detail the submissions of the parties as well as the material which was placed on record by the Petitioner to substantiate her claim. The Appellate Court upheld the findings of the Executing Court that entering her name on the assessment list does not support evidence of possession. The Appellate Court also took into consideration the certificate which was

issued by Panvel Municipal Corporation and observed that the certificate was issued on 21st April, 2022 on the application of the Respondent no.2 i.e. the husband of the Petitioner. The Appellate Court doubted the authenticity of the claim of the Respondent nos.2 to 4 that the Petitioner was residing separately from the Respondent no.2. This contention of the Respondent No.2 was at variance with the contention of the Petitioner that she was residing separately from her husband and there was dispute between them, which contention was raised to support her claim that she was unaware of the litigation.

13. Heard Mr. Karl Shroff, learned counsel appearing for the petitioner and Mr. Milind Prabhune, learned counsel appearing for respondent no.1.

14. Mr. Shroff, learned counsel appearing for the Petitioner submits that the Executing Court was required to give an opportunity to the Petitioner to lead evidence and without any evidence being led, the Executing Court as well as the Appellate Court has reached to the conclusion that the Petitioner was not in possession to the suit property. He would further contend that the material produced on record establishes the *factum* of ownership of the Petitioner as well as the possession of the suit property. He would further submit that the

material fact to be considered was that the Respondent no.1 had sought extension of the term of the leave and license agreement by excluding the period during which the Respondent no.1 was dispossessed till the possession was restored and the said relief was not granted by the Trial Court. As such, he would urge that the term of the leave and license agreement having come to an end, the possession could not have been restored. He has taken this Court to the findings of the Appellate Court and would urge that the execution of the judgment and decree dated 18th March 2019 would amount to rewriting the terms of the contract inasmuch as the period of license being over and the relief of extension being refused, the Respondent no.1 was not entitled to possession. In support of his submissions, he relies upon the decision of the Apex Court in **Bangalore Development Authority vs. N.Najjappa and Anr.** reported in **[2021 SCC OnLine SC 1179]** and the decision of the Patna High Court in Most. **Sanjana Devi Vs. Amar Yadav** reported in **[(2007) OnLine Patna 1]**.

15. *Per contra*, learned counsel appearing for Respondent No.1 raises an objection as to the maintainability of petition. He would further submit that in the civil revision application preferred by Respondent no.5 an undertaking was given to this Court to handover the possession in event no protection is granted by the Apex Court by

31st May, 2022. He would urge that the undertaking makes it clear that the possession is with Respondent no.5 and not with the Petitioner. He would also dispute the ownership of the property as claimed by the Petitioner and would submit that the Petitioner had not participated in the trial and there is no material on record to demonstrate, apart from bare words, that the Petitioner was not aware of the proceedings. He further submits that the grounds taken can be agitated in a separate suit and not by way of the present proceedings. He further submits that the application filed in the execution proceedings is an attempt by the Respondent nos.2 to 4 to obstruct the Petitioner from enjoying the fruits of his decree. He has taken this Court to the findings of the Appellate Court as regards the possession and ownership claimed by the Petitioner.

16. Considered the submissions of learned counsel for the parties and perused the papers and proceedings.

17. Before advertng to the merits of the matter, it would be beneficial to take a look at the relevant provisions of CPC pertaining to the execution of decree. The relevant provisions appear in Sections 36 to 54 of Part II of the CPC and Rules 97 to 106 of Order 21 of the CPC. Section 47 of the CPC provides for the questions which are

required to be determined by the Court executing the decree and reads thus :

"47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

18. The relevant Rules are Rule 97, Rule 99, Rule 101, Rule 103 and Rule 105 of Order 21, which reads thus:

"97. Resistance or obstruction to possession of immovable property.—*(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.*

(2) *Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."*

"99. Dispossession by decree-holder or purchaser.—(1) *Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.*

(2) *Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."*

"101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

"103. Orders to be treated as decrees.—Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."

"105. Hearing of application.—(1) *The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.*

(2) *Where on the day fixed or on any other day to which the hearing may be adjourned the Applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed."*

19. The application in question has been preferred by the Petitioner under the provisions of Order 21 Rule 97 of CPC. A plain reading of Rule 97 of Order 21, indicates that same takes into account a situation where there is resistance or obstruction to the holder of decree for possession of immovable property by any person. In the present case, the Petitioner claims to be in possession of the suit property in her own right as a co-owner of the property.

20. Before advertng to the facts in hand, useful reference can be made to the decision of the Apex Court in the case of ***P.Janardhan Rao vs Kannan*** [2004 SCC Online SC 1297]. In the said decision the Apex Court was considering the case of obstructionists who claimed that the suit property belonged to them since 1965 and held in paragraph 8 and 9 as under :

“8. Order 21 Rule 97 CPC is the provision for removal of the person bound by the decree who does not vacate. It takes into account a situation where resistance to possession is offered by the judgment-debtor or any other person bound by the decree which will include the claim of a person who claims to be in possession in his own right and independently of the judgment-debtor but whose claim ex-facie is unsustainable. Where, however, resistance is offered or where obstruction proceeds from the claimant claiming to be in possession in his own right and whose claim cannot be rejected on the ground of want of good faith, without investigation, the decree-holder must proceed under order 21 rule 97. [See: [Ragho Prasad v. Pratap Narain Agarwal](#) reported in 1969 All. L.J. 929].

9. In the case of [Noorduddin v. Dr. K. L. Anand](#) reported in [(1995) 1 SCC 242], it has been held as follows :

"8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code [Amendment Act](#), 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

9. Adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almanac (sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice. The court has, therefore, to wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.

10. The question is whether the executing court was right in dismissing the application on the ground that the dispute was adjudicated in RFA No.305 of 1986 or as held by the High Court that the dispute was decided in the writ proceedings referred to earlier. The execution court is enjoined to adjudicate the claim or the objection or the claim to resistance. As seen, Rule 97 enables such a person to make an application which must be independent of the judgment-debtor or a person having derivative right from the judgment-debtor. The applicant in his own right must be in

possession of the property."

21. Applying the test laid down by the Apex Court, the question is whether the Petitioner is in possession of the property in her own right. The petitioner-obstructionist claims to be the co-owner of subject property and in possession of the same in her own right. Let us first examine the documentary material produced on record by the Petitioner. To support her claim of co-ownership and possession, three documents are produced by the Petitioner as discerned from the findings of the Appellate Court, the first is the assessment extract of Panvel Municipal Corporation of the year 2015-2016 which shows her name along with the Petitioner, the second is certificate issued by Panvel Municipal Corporation and the third is the electricity bill of the subject premises. Before this Court, only the assessment extract has been annexed to the Petition. Perusal of the assessment extract discloses that the same is of the year 2015-2016 and reflects the name of Petitioner along with Respondent No.2. To substantiate her claim of co-ownership, it was necessary to produce the title deeds in respect of the subject property on record. The assessment extract cannot be said to be a conclusive proof of ownership of the premises. Further, the extract is of the year 2015-2016, viz, during the pendency of Special Civil Suit No 569 of 2011. To the same effect is the

electricity bill, which has been considered by the Appellate Court and the finding is that the electricity bill shows that the supply is started on 15th July, 2022. Similarly, the certificate issued by Panvel Municipal Corporation, which appears to reflect the name of Petitioner as owner. The certificate as well as the electricity bill is not produced before this Court, however, the said documents have been considered by the Appellate Court and held that the same does not prove the possession of the petitioner. Considering that the assessment extract is of the year 2015-2016, the possibility of Petitioner being *transferee pendente lite* cannot be ruled out. In such event, the Petitioner will be bound by the decree. It was required of the Petitioner to produce documentary material on record to prove her joint ownership of the suit premises prior to the institution of Special Civil Suit No.569 of 2011, which in this case would be the title deeds of suit property which the Petitioner has failed to produce. Considering the material produced on record, in my opinion, the Petitioner has failed to establish her joint ownership of the suit premises.

22. The Petitioner claims ignorance about the transactions of leave and license agreements executed between Respondent No.2 with Respondent No.1 as well as the agreement executed between Respondent No.2 and Respondent No.5. She has further claimed that

she was totally unaware of the litigation between the parties and, as such, she was not bound by the decree. While considering this issue, the Appellate Court has noted the contention of respondent nos.2 to 4 that the petitioner was looking after the economic and other affairs of the suit property and her younger son was helping her and that she had an office on the ground floor of the subject property. Respondent No.1 was inducted in the subject property pursuant to a leave and license agreement executed in the year 2011. Respondent Nos.2 to 4 contend that the Petitioner was looking after the affairs of suit property and had her office on the ground floor of the subject property and, as such, the claim of Petitioner that she was unaware of the leave and license agreements as well as of the proceedings instituted by Respondent No1 cannot be accepted.

23. The objection to the execution application is that being a co-owner of property, she was not impleaded as party to the proceedings and, as such, the decree does not bind the petitioner. For substantiating that submission, it was first necessary for the petitioner to bring on record sufficient material to establish her ownership of property, which has not been done. There is also no explanation as to why there was no challenge to the judgment and decree passed in Special Civil Suit No. 569 of 2011 by the petitioner.

24. As regards the issue of possession, it is the case of the petitioner, in her application she states that although this court by its order dated 31st may 2022 passed in Civil Revision Application No. 115 of 2022 had directed respondent no.5 to handover possession to respondent No. 1, there is no question of handing over possession as she is in possession of the suit property. While canvassing this submission, it was necessary for the petitioner to at least plead as to how and when the possession was handed over to her by respondent no.5. This is for the reason that it is the case of respondent nos.2 to 4 as well as the petitioner that the premises were firstly handed over by respondent no.2 to the respondent no.1 and thereafter prior to the determination of leave and license agreement entered into between the respondent no.1 and respondent no.2, the respondent no.2 had entered into a fresh leave and licence agreement with respondent no.5. It is further pleaded in the application that against the judgment and decree which was put into execution respondent no.5 had preferred a civil revision application, bearing CRA No.115 of 2022, in which this court had directed respondent no.5 to handover the possession to respondent no.1. Having put forward this case in the application, there is no whisper in the application as to how the petitioner has come in possession of the suit premises. It is not her case that instead of handing over possession of the premises to

respondent No.5 as directed by this court in revision application, respondent No.5 has handed over possession to the petitioner.

25. The appellate court has disbelieved the contention of respondent nos.2 to 4 that the petitioner was staying separately in view of the fact that the certificate by Panvel Municipal Corporation had been issued at the instance of respondent no.2. Considering the said fact, the appellate court has reached the finding that there is collusion between respondent No.2 and the petitioner to defeat the claim of respondent no.1.

26. The submission canvassed by Mr. Shroff is that the evidence is required to be led while deciding the application under Order-21 Rule-97 of CPC. The provisions of Order-21 Rule-105 CPC provide that for the hearing of the application, the court may fix a day and the provision also provides for the hearing of application ex-parte in event of opposite party does not appear and for the dismissal of the application when the applicant does not appear. From the perusal of provisions, in my opinion, it is the discretion of the executing court to decide in which manner the application has to be disposed of, either by way of evidence or on the basis of affidavit and the documents which have come on record. The answer to Mr. Shroff's submission

lies in the decision of Apex Court in the case of ***Silverline Forum Pvt Ltd v. Rajiv Trust [(1998) 3 SCC 723]*** wherein the Apex Court while considering the issue whether 3rd party resister can avail of the remedy provided in Order 21 Rule 101 has held in paragraph 13 and 14 as under :

"13. In the above context we may refer to Order 21 Rule 35(1) which reads thus :

"35.(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or too such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property."

14. It is clear that executing court can decide whether the resistor or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination. If the Court deems it necessary."

27. The fact remains that in civil revision application which was filed challenging the judgment and decree passed in Special Civil Suit No. 569 of 2011, respondent no.5 had given an undertaking to handover the possession to respondent no.1. From the material which has come on record it can be inferred that in order to circumvent the order of

this court and to deprive respondent no.1 from the benefits of judgment and decree in his favour, the petitioner in collusion with respondent nos. 2 to 5 have filed the present application raising objections and resisting the handing over the possession. It is also not demonstrated as to why there were no efforts made by the petitioner for challenging the judgment and decree before this court when the same was done by respondent No.5. It appears that after the decision of this court dated 30th March 2022, having failed in their attempt to challenge the judgment and decree in favour of respondent no.1, the present application is filed.

28. It is pertinent to note that the undertaking has been given by respondent no.5 to this court on 3rd May 2022 that if he fails to get any protection from the Apex Court by 31st May 2022, the possession would be delivered to respondent no.1. It would be worthwhile to note that the application of petitioner under Rule 97, Order 21 CPC has been filed on 28th July 2022 after respondent nos.2 to 5 did not succeed in getting any favourable orders from the Apex Court. It is clear from the events which have unfolded that there is an attempt to stall the execution proceedings by now putting up the petitioner as an obstructionist.

29. As regards the contention of learned counsel for the petitioner that the term of agreement is already over and, as such, the handing over possession would amount to rewriting of the contract, in my opinion, the executing court cannot go beyond the decree and in view of the judgment and decree directing handing over the possession as well as in view of the undertaking filed by respondent no.5, the possession was required to be handed over. It is thereafter open for the petitioner to adopt necessary remedies for taking back possession of the premises on the ground that the contract no longer exists and stands terminated by the efflux of time.

30. As far as the reliance placed on the decision of **Bangalore Development Authority (supra)**, in the facts of that case, the Bangalore development authority had filed an execution application challenging the order of executing Court dismissing their application under Order 21 Rule 97 of CPC on the ground that there was no material on record to show that Bangalore development authority has taken possession of the land. In the facts of that case, the Apex Court held that Bangalore development authority was claiming right, title and interest in the land in question being acquired, and that the lease agreement between the decree-holder and judgment debtor was subsequent to the acquisition of suit land. In that case the award was

declared and the notification under the Land Acquisition Act evidencing the taking over of possession of the land was published. In that context, the Apex Court considered the provisions of Order-21 Rule-101 CPC and held that the application will have to be adjudicated and for that a separate suit is not required to be filed. In the present case, the executing court as well as the appellate court have not dismissed the application merely on the ground that the petitioner not being in possession cannot obstruct or object to the execution of the decree. The appellate court has considered the documents which are produced on record to come to a conclusion that the petitioner has not established her title to the property and has also failed to substantiate her case of being in possession of the suit property. In that view of the matter, the decision of the Apex Court is clearly distinguishable on facts.

31. Apart from merits of the case, I am not inclined to interfere in view of the objection raised by learned counsel for respondent no.1 as to the maintainability of petition. The provisions of Order 21 Rule 103 CPC provide that where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree. He would therefore contend that

the writ petition is not maintainable. To counter this argument, learned counsel for the petitioner has sought to rely on the decision of Patna High Court in ***Most Sanjana Devi (supra)*** wherein the court has held that for the order to be passed in terms of Rule 103 Order 21 CPC, it must be preceded by an adjudication. In that case, the petitioner had filed a revision application against the order passed by the executing court under Order 21 Rule 97 CPC and, as such, had submitted that there was no adjudication, it would not be an order in terms of Rule 103 Order 21 CPC. In the present case, after the order of executing court was passed in the application under Order 21 Rule 97, First Appeal No.33 of 2022 was filed before the District Judge Raigad by accepting that the order passed by the trial court was a decree within the meaning of Rule 103 of Order 21 CPC. That being so, against the judgment dated 23rd February 2023 the remedy of the petitioner is to file a second appeal and the writ petition is not maintainable. The Patna High Court in the said decision was considering the issue as to whether in the fact-situation therein, the order passed in an application under Order-21 Rule-103 CPC can be deemed to be a decree or would be an order without adjudication and, thus, amenable to the revisional jurisdiction of the Court. While answering the same issue, the Patna High Court has held that the adjudication would be similar to a suit and if there is no adjudication,

then it is not an order in terms of Rule 103 Order 21 of CPC. The Patna High Court was considering whether an appeal would lie or revision jurisdiction can be invoked and, as such, the same is not an authority for the proposition that in every application filed under Order-21 Rule-97, CPC the evidence has to be led. In that case the Patna High Court held that there was no adjudication as the Court merely looked to the objection and its rejoinder and held that the objection to be not maintainable. In the present case, the executing court has considered the material which has been placed on record and has decided the application. Pertinently, before the executing Court there was no application preferred by the petitioner seeking permission to lead evidence. Having failed to file any application for permission to lead evidence, the submission of the petitioner that no opportunity was given to the petitioner to lead evidence cannot be accepted.

32. The writ petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India. It is well settled that the powers under Article 227 of the Constitution are not to be exercised for the purpose of correcting mere errors of fact or law unless it is demonstrated that grave injustice is being caused. In the present case, considering the material which has come on record, in

my opinion, the petitioner and respondent Nos. 2 to 5 are in collusion to deprive respondent no.1 of the benefit of judgment and decree passed in his favour in Special Civil Suit No. 569 of 2011. As such, I am not inclined to interfere in the Impugned orders.

33. In view of the above discussion, writ petition stands dismissed.

34. In view of the disposal of the writ petition, nothing survives for consideration in Interim Application No. 4364 of 2023 and the same is accordingly disposed of.

35. At this stage, learned counsel for the petitioner seeks extension of interim stay which has been operating in favour of the petitioner since November 2022. The request is opposed by learned counsel for respondent no.1. He would submit that stay may be continued subject to the petitioner filing an undertaking in this Court that in event the petitioner is unable to get any stay from the Apex Court within a period of four weeks from today, the possession would be handed over to respondent no. 1. Considering the history, the request of respondent no. 1 is accepted. The petitioner will file an undertaking within a period of one week from today. The stay granted in favour of the petitioner is extended for a period of four weeks from today.

[Sharmila U. Deshmukh, J.]