



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

**WRIT PETITION NO.10388 OF 2011
WITH
CIVIL APPLICATION NO.2086 OF 2016**

Sakinabi Mohammed Akbar & Ors. Petitioners

Vs.

Rashidabai Mohammed Amin & Ors. Respondents

Ms. Pratibha Shelake for the Petitioners.

Mr. Surendra G. Mittal for Respondent No.6.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30th OCTOBER 2023.

P. C.

1. The challenge in the Petition is to the order dated 12/4/2011 passed by the executing Court in Misc. Application No.27/2011 directing the parties to lead evidence in respect of their respective contentions.

2. It is not necessary for this Court to go into merits of the matter for the reason that admittedly the application has been filed under Order 21 Rule 97 of CPC. Learned counsel appearing for the Petitioner fairly conceded that the provisions of Order 21 Rule 97 to 106 are a Code in itself and the proceedings have to take

as far as possible the nature of a Suit.

3. It needs to be noted that the executing Court has not concluded the issue in favour of either of the parties and has merely directed the parties to lead their respective evidence.

4. Learned counsel appearing for the Respondent submits that he had already filed his affidavit of evidence and the matter was fixed for cross examination and in the mean time the present petition was filed in which a stay to the proceedings was granted by this Court.

5. Having regard to the provisions of Order 21 of CPC, it is clear that the proceedings therein have to take the form of the suit and issues have to be framed and evidence led. Under the provisions of Order 21 Rule 103 of CPC, the order made on an Application adjudicated under Rule 98 or Rule 100 of Order 21 shall have the same force and be subjected to the same conditions as to an appeal or otherwise as if it were a decree.

6. Considering that this Court *vide* Order dated 19/12/2011 had granted a stay of the proceedings by reason of which proceedings have been pending since the year 2011, the executing Court is requested to decide the same expeditiously.

7. Writ Petition stands dismissed.

8. In view of disposal of writ Petition, Civil Application does not survive and the same is disposed of accordingly.

SHARMILA U. DESHMUKH, J.