

VRJ

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

WRIT PETITION NO.303 OF 2020

Bhalchandra Aridamanlal Jain ... Petitioner

V/s.

Narmadabai J. Thakkar Since Deceased
Through Legal Heirs & Ors. ... Respondents

Digitally
signed by
VAIBHAV
RAMESH
JADHAV
Date:
2023.11.04
10:45:55
+0530

**WITH
INTERIM APPLICATION NO.14886 OF 2023
IN
WRIT PETITION NO.303 OF 2020**

Bhalchandra Aridamanlal Jain Through
Power of Attorney Holder Rahul Vithlani ... Applicant

V/s.

Narmadabai J. Thakkar Since Deceased
Through Legal Heirs ... Respondents

Mr. Yogeshwar S. Bhate with Ms. Chandni Sachade for
petitioner/applicant.

Mr. Anand Shalgaonkar for respondent Nos.2 to 4.

Mr. Kuldip T. Pawar for respondent No.5.

Mr. Rajesh Datar for respondent No.1a

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 3, 2023

P.C.:

1. The obstructionist who filed application under order 21 Rule 97 of the Civil Procedure Code, 1908, is challenging order passed by the executing Court refusing to frame certain additional issues

as suggested by the petitioner.

2. Considering the scheme of Order 21 Rules 97 to 103 of the Civil Procedure Code, any order passed on an application under Order 21 Rule 97 of the Civil Procedure Code has effect of decree under Order 21 Rule 101 of the Civil Procedure Code. Therefore, it was necessary for the executing Court to frame independent issue. In such matter only issue relevant for adjudication is whether the obstructionist proves his independent right to continue with possession of the suit property.

3. On perusal of the impugned order, it appears that the executing Court has already framed three issues which cast burden on the obstructionist. Since the issues which cast burden on the obstructionist are sufficient to adjudicate rights of the obstructionist, in my opinion, he cannot seek framing of additional issues.

4. Hence, the writ petition is dismissed. No costs.

5. In view of dismissal of the writ petition, the interim application does not survive the same stand disposed of as infructuous.

(AMIT BORKAR, J.)