

AGK

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

WRIT PETITION NO.10959 OF 2023

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GANESH
KULKARNI

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Kalabai Dattu Sonawane

... Petitioner

V/s.

Pandurang Balaji Sonawane,
since deceased through heirs
and legal representatives & Anr.

... Respondents

Mr. Pramod Pawar for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2023

PC.:

1. By this writ petition under Article 227 of the Constitution of India, the judgment debtor is challenging order of issuance of warrant in execution of decree in a suit for possession.

2. Paragraph 1 of the plaint describes two rooms surrounded by four boundaries as the suit property. The Trial Court while passing decree directed defendant Nos.1 and 2 to deliver possession as under:

“2. The defendant Nos.1 and 2 are hereby directed to repair two rooms of the plaintiff and put the tin shed on those rooms with their costs and hand over possession of eastern front side two rooms to the plaintiff.”

3. The said decree has attained finality. Decree-holder has,

therefore, filed execution of the said decree. In such execution proceedings, the decree-holder filed an application for delivery of possession of the suit property which is objected by the judgment debtor alleging that the decree was for repair of two rooms; however, the decree holder filed an application stating that he be permitted to carry out the repairs. By the impugned order, the Trial Court has directed judgment debtor to deliver possession.

4. In my opinion, the prayer made by the decree-holder does not amount to modification of the decree. Moreover, in my opinion the obligation cast on defendant Nos.1 and 2 to repair is taken up on himself by the decree-holder to repair the suit property. Exercise of such power by the executing Court would not amount to modification of decree as the description and the suit property remains the same. The decree is for possession of the suit property.

5. Therefore, there is no merit in the objections raised by the judgment debtor.

6. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)