

SA Pathan

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

WRIT PETITION NO.12879 OF 2023

Prasanjeet Shahaji Kshirsagar

Through Power of Attorney Holder

... Petitioner

V/s.

Deepali Prasanjeet Kshirsagar & Anr.

... Respondents

SHABNOOR
AYUB
PATHAN
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SHABNOOR AYUB
PATHAN
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Mr. Sandesh D Patil i/by Mrs. Divya A Pawar-Patil, for
petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 20, 2023

P.C.:

1. The challenge in this writ petition under Article 227 of the Constitution of India is an order passed by the Executing Court dated 22 June 2023, rejecting objection raised by the judgment debtor that Execution Petition is not maintainable.

2. According to the petitioner, he himself along with respondent/wife purchased subject flat for consideration of Rs.1,10,39,742/-. According to him, he paid Rs.87,77,036/- to the builder. According to him, they had jointly taken loan from various financial institutions towards payment of consideration of the flat in question.

3. Parties arrived at consent terms in Hindu Marriage Petition No.114 of 2020 filed under Section 13-B (1) of Hindu Marriage

Act, 1955. Under clause 9 of the consent terms, the petitioner agreed that the husband and wife are joint owners of the property and husband undertook to pay 50% of sale amount to the wife.

4. The flat in question was sold for Rs.96 lakh.
5. According to decree holder/wife, she did not receive her 50% share. According to her, she received only Rs.14 lakh.
6. The petitioner submits that he paid Rs.34,74,931/- towards loan and since loan was obtained by petitioner and respondent jointly, wife was under obligation to share 50% of loan amount.
7. It appears that the wife filed Execution Petition for enforcement of consent terms. Clause 9 of the consent terms read as under:

9. The petitioner agreed that the Petitioner no.1 and 2 are the joint owners of the residential property situated at, Flat no.904, Lodha Spendor, Platino, Bhyanderpada, Ghodbunder Road, Thane (W), the petitioner no.1 hereby undertakes that whenever they would sell the said flat, 50 percent of the said share/sale amount shall be given to the petitioner no.2. Both the parties equally distribute the shares of the said flat.

8. On perusal of clause 9, it is clear that 50% of amount to be paid to the wife, is not dependent on payment of her share of loan. In my opinion, obligation to pay 50% share of loan amount will be independent agreement which needs to be incorporated in consent

terms. In the absence of such independent agreement in the consent terms, the Executing Court committed no error of jurisdiction by holding that Execution Petition for enforcement of 50% share of Rs.96 lakh is maintainable. However, it will be open for the petitioner to adopt appropriate remedy as permissible in law, if it is proved that the respondent/wife was under obligation to pay her share of loan.

9. With this clarification, the writ petition is dismissed. No costs.

(AMIT BORKAR, J.)