

VRJ

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

WRIT PETITION NO.10040 OF 2015

VAIBHAV
RAMESH
JADHAV
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Date: 2023.08.23
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Rashmi Geet Sangeet Sagar Trust ... Petitioner

V/s.

Waliv Land Developers Through Ashwin
Shah & Anr. ... Respondents

Ms. Usha Tiwari with Ms. Manshi Jain for the
petitioner.

Mr. Darshit K. Jain i/by Ms. Divya Jain for the
respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 23, 2023

P.C.:

1. Challenge in this petitions is to the order dated 31st August 2013 passed by the 2nd Joint Civil Judge, Junior Division, Vasai in R.D. No.24 of 2012. It appears that the respondents filed an application purportedly under Order 21 Rule 97. The trial Court based on the said application directed decree holder to add obstructionist as necessary party to the execution application. This course is not permissible as the scheme of Order 21 Rule 97 to rule 103 of the Civil Procedure Code, 1908, is a complete code in itself which confers status of decree to the order passed on an application under Order 21 Rule 97. Such objection needs to be decided as a suit.

2. Therefore, the person who is objecting to the decree claiming independent right cannot be made party to the execution application. Therefore, the impugned order cannot be sustained.
3. However, it is made clear that this Court has not adjudicated issue of maintainability of such application in the context of nature of decree passed in favour of decree holder. The executing Court shall decide the application purportedly under Order 21 Rule 97 on its own merit. Hence, following order:
 - a) Impugned order dated 31st August 2013 passed by the 2nd Joint Civil Judge, Junior Division, Vasai in R.D. No.24 of 2012 is quashed and set aside.
4. Considering the fact that the impugned order is of the year 2013, the executing Court is directed to decide the execution petition within six months from today.
5. The civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)