



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 922 of 2020

Purushottam S/o Totaramji Navkhare

Versus

M/s Suyog Development Corporation, Nagpur through its Partner
Rameshsingh Babulsingh Baghel and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.Shelat, Advocate for the petitioner.

CORAM : ANIL S. KILOR, J.

DATED : 17th OCTOBER, 2023.

Heard.

2. The Order Below Exhibit 8 dated 2nd August, 2019 passed by the learned Civil Judge, Junior Division, Hingna in R.D.No. 13 of 2016, rejecting the objection filed by the petitioner under Section 47 of the Code of Civil Procedure (in short hereinafter referred as "CPC") for execution of decree passed on 29th September, 2019, is under challenge in this writ petition.

3. The reasons recorded by the learned Executing Court while rejecting the objection are as follows:

“5. Section 47 of the Code of Civil Procedure run as under,

“All questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purpose of this section, be determined by the Court.”

6. At the outset, the section is limited to the parties to the suit or their representative, who were parties to the suit in where decree is passed. The question relating to the satisfaction, execution of decree between parties to the suit or their representatives to be decided by the court who execute the decree. The present objector was not party to the suit. Moreover, it reveals that the objector has purchased the property from Judgment Debtor during pendency of the suit, decree is binding to the Judgment Debtor and any person claiming right over the property through Judgment Debtor. Therefore, the decree is binding on the objector also. From the record, it appears that present objector is subsequent purchaser. He has purchased the property during pendency of the suit. He was not party to the suit or he is not the representative of the parties to the suit. Therefore, he is not having any right to challenge the decree. Therefore, the objection is

dismissed. The possession warrant be issued to the decree holder.”

4. Shri Shelat, learned counsel for the petitioner fairly states that the reasoning recorded by the learned Executing Court do not suffer from any legal infirmity. However, he submits that objection was rejected on the technical ground i.e. Section 47 is limited to the parties to the suit or their representatives and since the petitioner was not party to the suit, the objection was rejected. He, therefore, submits that he can raise the same objection under Order 21 Rule 97 of the CPC. Accordingly, he prays for conversation of application Exhibit 8 filed under Section 47 of the CPC into an application under Order 21 Rule 97 of CPC.

5. This relief cannot be granted to the petitioner as nobody appeared on behalf of the respondent and there is no prayer made in the present writ petition for conversion of application Exhibit 8. If such request is allowed by this Court, it would amount to allow such prayer in absence of respondent without granting them any opportunity to submit their say.

6. In the above referred backdrop, Shri Shelat, learned counsel for the petitioner seeks liberty to move a separate application under Order 21 Rule 97 of CPC in the execution proceeding.

7. As there is no legal infirmity committed by the learned Executing Court in passing the impugned order. Accordingly, the writ petition is dismissed.

8. The liberty is granted to the petitioner to file a separate application under Order 21 Rule 97 of CPC before the learned Executing Court.

9. In case such application is filed, learned Executing Court shall decide the same in accordance with law.

10. Interim relief granted by this Court vide order dated 17th February, 2020 shall continue for three weeks from today.

11. On expiry of period of three weeks, the interim relief shall stand automatically vacated.

[ANIL S. KILOR, J.]