



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

Writ Petition No.1840 of 2020

**SAU. PURNABAI W/O DEWAJI MESHARAM AND OTHERS VS RAJENDRA
RAMLAL JAISWAL**

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

Court's or Judge's Order

Ms (Dr) R.S. Sirpurkar, Advocate for the Petitioner/s
Shri A.S. Dhawas, Advocate for the respondent

CORAM : ANIL S. KILOR, J.
DATED : 11.09.2023

1. Heard.
2. In this writ petition, the order below Exh.2 dated 02.03.2020 passed in Miscellaneous Judicial Case (MJC) No.136 of 2009 and common order below Exhs.81 and 81(A) dated 16.03.2020 passed in Special Darkhast No.31 of 2004 by the 3rd Jt. Civil Judge Senior Division, Chandrapur, are under challenge.
3. The learned trial Court rejected the application Exh.2 vide impugned dated 02.03.2020, filed by the petitioners for grant of stay to the execution proceedings. Whereas, vide order below Exhs.81 and 81(A) objections raised by the petitioners to the execution proceeding came to be rejected.
4. The petitioners purchased the suit property from one Dewaji, who is the predecessor in title and in the suit filed by the respondent against the Dewaji, for specific performance, the learned trial Court passed a judgment and decree in favour of the respondent on 08.12.2003. The said decree was exparte decree

and therefore, the petitioners filed MJC No.136 of 2009 (old MJC No.92 of 2004), challenging the said *exparte* decree and also filed a Regular Civil Suit No.324 of 2004 for permanent injunction.

5. The MJC No.136 of 2009 is still pending and it was transferred to the Executing Court i.e. 3rd Jt. Civil Judge Senior Division, Chandrapur, where the decree dated 08.12.2003 is pending for execution.

6. The suit filed by the petitioners for permanent injunction came to be decreed on 07.04.2007. However, it was reversed in the appeal filed by the respondent vide judgment and decree dated 20.12.2019 passed in Regular Civil appeal No.114 of 2007. The second appeal against the same is pending before this Court.

7. Thus, from the above referred facts, it is evident that before 3rd Jt. Civil Judge Senior Division, Chandrapur both the proceedings i.e. the MJC and the Special Darkhast are pending.

8. The Darkhast proceeding is for execution of decree dated 08.12.2003, whereas, the MJC proceedings is for setting aside the *exparte* decree dated 08.12.2003.

9. It is further evident that the MJC is pending since 2009, whereas, the Darkhast proceedings is pending from 2004.

10. The learned counsel for the petitioners submits that in view of the fact that the MJC is pending, the application (Exh.2) was moved for grant of stay to the execution proceedings and the same was rejected vide impugned order below Exh.2 dated

02.03.2020. She submits that if the petitioners succeed in MJC No.136 of 2009, there will be no question to proceed with the execution proceedings and therefore, according to her, the learned trial Court should decide the MJC first.

11. On the other hand, the learned counsel for the respondent submits that since the MJC and the Execution Proceedings are separate proceedings, the order dated 02.03.2020 passed in MJC and the order dated 16.03.2020 passed in Darkhast proceedings cannot be challenged in a writ petition.

12. In reply, the learned counsel for the petitioners submits that if the petitioners succeed in getting the order dated 02.03.2020 set aside, there is no need to go into the challenge raised to the order dated 16.03.2020.

13. In light of the rival contentions of the parties, I have perused the impugned orders.

14. From the above referred facts, it is evident that both the proceedings are pending since long. There is a substance in the submission of the learned counsel for the petitioners that, if the Court holds in favour of the petitioners while deciding the MJC, there is no question of execution of any decree.

15. In the circumstances, I am of the opinion that it would be in the interest of justice to decide the MJC first.

16. As far as the challenge to the order dated 16.03.2020 is concerned, the petitioners are permitted to withdraw the present petition to that extent and file the same afresh, if so desire.

17. In the circumstances, I pass the following order:

(i) The writ petition is **partly allowed**.

(ii) The order below Exh.2 dated 02.03.2020 passed by 3rd Jt. Civil Judge Senior Division, Chandrapur, is hereby quashed and set aside and thereby, it is directed the learned 3rd Jt. Civil Judge Senior Division, Chandrapur to decide the MJC first before passing any order of execution of sale deed in favour of the respondent.

(iii) The learned trial Court shall decide the MJC within three months from the next fixed date in the matter.

(iv) Both the counsel have undertaken to cooperate with the learned trial Court for deciding the MJC within stipulated period.

18. It is made clear that there is no stay to the execution proceedings.

19. The writ petition is **disposed of** in the above terms. No order as to costs.

[ANIL S. KILOR, J.]