

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

WRIT PETITION NO. 2650 OF 2021

Narayan Pandhari Wazire__ Vs. __Prakash Shankar Manatkar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. Rani Nitnaware, Advocate h/f Mr. O.Y.Kashid, Advocate for petitioner
Mr. A.M.Tirukh, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 09/03/2023

1] Heard Ms. Nitnaware, learned counsel for the petitioner and Mr. Tirukh, learned counsel for the respondent.

2] The petition challenges the order below Exh.10, dated 16.2.2021 (pg.29) whereby attachment of the property of the petitioner/ judgment debtor for violation of the judgment and decree dated 4.2.2011 passed in RCA No.173/2009 has been granted, till the petitioner gets permission from the Pollution Control Board (pg.35) as well as the order below Exh.20, dated 08.07.2021 rejecting the application for cancellation of the warrant of attachment (pg. 46).

3] It is contended by Ms. Nitnaware, learned counsel for the petitioner that the Gram

Panchayat, Khadki, has already given NOC dated 7.2.2011 (pg.65) and as such one part of the judgment dated 4.2.2011 passed in RCA No.173/2009 stood complied with. It is further contended that in so far as the direction regarding obtaining of due permission from the Pollution Control Board in light of the Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories, dated 29.2.2016, issued by the Central Pollution Control Board, Delhi (pg.71) the industry of the petitioner falls in the "White Category" [Table G-5, Item-14] and therefore, the business carried out by the petitioner of fabrication by using a welding machine was clearly permissible. It is also contended that the undertaking as called for by the Pollution Control Board has also been submitted by the petitioner (pg.67) and therefore, it is submitted that there is sufficient compliance with the judgment dated 4.2.2011 in RCA No.173/2009.

4] I am afraid, I am not able to agree with this submission. The judgment in RCA No.173/2009, dated 4.2.2011 between the parties hereto, which is put to execution, reads as under :

1. *The appeal is partly allowed.*
2. *The judgment and decree passed by the learned Civil Judge is hereby quashed and set aside.*
3. *The suit is partly decreed.*
4. *The defendant is hereby restrained from carrying out the work of fabrication and welding on plot No. 6-B which is adjoining to the house of plaintiff, unless he obtains due permission from the Gram Panchayat, Khadki as well as from Pollution Control Board.*
5. *Under the peculiar circumstances of the case, parties are left to bear their own costs in this appeal.*
4. *Decree be drawn up accordingly”.*

5] Operative para 4 of the aforesaid judgment would categorically indicate that the petitioner herein, who was the defendant in RCA No.173/2009, was restrained from carrying out the work of fabrication and welding on plot No.6-B adjoining to the plot of the plaintiff/respondent unless he obtains due permission from the Gram Panchayat, Khadki, as well as from the Pollution Control Board.

6] In pursuance to the said judgment, which has not been appealed from and has

therefore attained finality, the petitioner has obtained an NOC from the Gram Panchayat, Khadki, on 7.2.2011 (pg.65). However, the judgment also requires the petitioner to obtain due permission from the Pollution Control Board. There is no document on record to indicate that the Pollution Control Board has granted due permission to the petitioner. Merely saying that the industry of the petitioner falls in “white category” under the Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories, dated 29.2.2016, issued by the Central Pollution Control Board, Delhi, would not mean that the Pollution Control Board has granted due permission as contemplated by the judgment dated 4.2.2011.

7] That being the position, there is clearly an absence of due permission, as is directed by the aforesaid judgment and decree, considering which the provisions of Order 21 Rule 32(1) of the CPC, have been rightly invoked by the respondent by putting the decree to execution. I therefore do not see any reason to interfere in the order dated 16.2.2021 below

Exh.10 and so also the order dated 8.7.2021 below Exh.20. The petition is therefore without any merit and is accordingly dismissed.

8] Needless to say that, this does not prevent the petitioner from obtaining due permission from the Pollution Control Board for carrying on the business as is the requirement in view of the operative para 4 of the judgment and decree dated 4.2.2011 passed in RCA No.173/2009.

9] The interim order dated 29.7.2021 shall continue only for a period of 15 days from today.

JUDGE

Rvjalit