



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

WRIT PETITION NO.5193 OF 2023

(Smt. Sushila w/o Laxminarayan Gupta Vs. Anilkumar s/o Shankarlal Gupta and another)

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

Court's or Judge's orders.

Mr. A. A. Bansod, Advocate for Petitioner.
Mr. Prasad Gupta, Advocate for Respondent No.1

CORAM: ANIL S KILOR, J.

DATE: 7th SEPTEMBER, 2023.

The order below Exh.18 dated 26.06.2023 passed by the Civil Judge, Senior Division, Nagpur in S. D. No.34/2018 issuing detention warrant against the petitioner is under challenge.

2. In the present matter the decree for specific performance was passed on 27.04.2011 and since then it could not be executed for one or the another reason. The petitioner is a judgment debtor who is avoiding the decree. Therefore, the application under Order 21 Rule 32 (1) of the Code of Civil Procedure was filed by the decree holder for issuance of warrant of detention in civil prison.

3. The learned trial Court after considering the reply filed by the petitioner, passed the impugned order. The reasons recorded by the learned trial Court read thus:

3. The record shows that the present darkhast is filed for execution of decree passed in SCS No.1096/2007 wherein it was directed to deposit the remaining

consideration amount of Rs.4,00,000/- within a period of two months in the court. The decree holder has deposited the said amount vide cheque No.000041 drawn on Laxmivilas Bank on 28.5.2015 in the office of Nazar. Notice dated 24.6.2015 was served to judgment debtor No.1 for execution of sale deed and to withdraw the amount from the court.

4. The record further shows that the judgment debtors had filed application/objection under Section 47 of CPC at Exhibit No.8 which was rejected by my learned predecessor by passing order on 01.12.2021 and same objections are raised to this application by judgment debtors. There is no order of any competent court staying this execution proceedings. The decree is passed long back in the year 2011 and judgment debtors failed to obey the decree. The objections raised by judgment debtors are not sustainable. In view of above, I pass the following order-

- ORDER -

- 1. The application is allowed.*
- 2. Detention warrant be issued under Order 21 Rule 38 of Code of Civil Procedure, 1908 against judgment debtor Nos.1 and 2.*

4. The only ground raised in this petition is that the petitioner is not the owner of the suit property, and therefore, he cannot execute the sale-deed. However, there are no pleading in that regard or any evidence led by him before the learned trial Court.

5. In the circumstances, the said contention cannot be considered in a writ petition filed against the order of

issuance of warrant to detain the judgment debtor in civil prison.

6. Thus, in absence of any illegality or perversity pointed out by the petitioner, I do not find any merit in the present petition. Accordingly, the writ petition is dismissed.

(ANIL S. KILOR, J.)