



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

Writ Petition (WP) No. 6315 of 2023

Chandrakant Govindrao Pingle

Versus

Madhukar Govindrao Lute

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

Court's or Judge's Order

Shri M.B.Turankar, Advocate for the petitioner.

Shri A.A.Sambaray, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 11th DECEMBER, 2023.

Heard.

2. The order dated 28th July, 2023 passed by learned Civil Judge, Senior Division, Nagpur in S.D.No.127 of 2013, rejecting the application moved by the petitioner who is the judgment debtor to dispose of the proceeding as the decree is fully satisfied, is under challenge in this writ petition.

3. In the present matter, the decree holder filed a suit for specific performance of contract against the judgment debtor/the petitioner and the said suit i.e.

Special Civil Suit No. 238 of 2007 was decreed on 28th September, 2010.

4. Thereupon, the executing proceeding was filed to execute the sale-deed and for recovery of costs.

5. On 6th October, 2017, the learned Executing Court issued possession warrant of the suit property under Order XXI Rule 35 of the Code of Civil Procedure in favour of the Decree Holder, however, the said order was not challenged by the petitioner. Even the review application filed by the petitioner seeking review of the order dated 6th July, 2017, came to be rejected on 17th April, 2023.

6. In the present matter, it is the case of the petitioner that though in the decree there is no mention of handing over possession and it only speaks about the execution of sale-deed which has already been executed, nothing remains to be complied with as far as the decree is concerned. Accordingly, he moved an application to dispose of the execution proceeding as the decree was satisfied.

7. The said application came to be rejected vide order below Exhibit 91 dated 17th April, 2023 passed in SD No. 127 of 2013.

8. As far as submission of the learned counsel for the petitioner that there is no decree to handover the

possession and therefore no warrant of possession can be issued, cannot be considered in absence of any challenge raised to the order issuing possession of warrant.

9. There is no dispute that on 6th October, 2017, the learned Executing Court issued possession warrant of the suit property and the application was moved for review of the said order was rejected on 17th April, 2023. Despite the same while filing the present writ petition on 18th August, 2023, the said facts were not stated in the petition and no challenge is made to the said order issuing possession warrant.

10. Thus, in absence of any challenge to the order issuing of possession warrant, the submission of the learned counsel for the petitioner, cannot be accepted.

11. In the circumstances, I do not find any merit in the present writ petition. Accordingly, the present writ petition is dismissed.

[ANIL S. KILOR, J.]