

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

**Writ Petition (WP) No. 5597 of 2018**

Latabai W/o subhashrao Dahake

**Versus**

Jayat S/o Punjaji Takarkhede

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

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Court's or Judge's Order

Shri Atharva Manohar Advocate h/f Shri Akshay A  
Naik, Advocate for the petitioner.

Shri A.D.Patil, Advocate for the respondent.

**CORAM : ANIL S. KILOR, J.  
DATED : 2<sup>nd</sup> AUGUST, 2023.**

The present petition arises out of the judgment and decree dated 21<sup>st</sup> February, passed by learned Joint Civil Judge, Junior Division, Warud in Regular Civil Suit No. 71 of 2006 declaring that the petitioner and the respondent are having half share in the suit shop.

2. The suit shop is 9.6 feet in width and 20.8 feet in length and therefore despite the appointment of Court Commissioner on three occasions, the decree could not be executed, considering the size of the suit shop.

3. In the above referred backdrop, this Court vide order dated 4<sup>th</sup> July, 2023 had opined that there is only option available for both the parties to get the decree executed either to sell half share by one of the parties to other or sell out the suit shop and accept half share by each of the parties in total consideration. Accordingly, both the parties were asked to file their suggestion on affidavit.

4. Today, Shri Manohar, learned counsel for the petitioner has filed affidavit. The same is accepted.

5. The son of the petitioner is personally present in the Court who has been identified by Shri Manohar, learned counsel.

6. Both the parties have accordingly filed their respective affidavits and from the affidavits of both the parties, it is evident that both are ready to sell the suit shop by way of public auction.

7. Hence, I refer the matter back to the Executing Court to appoint the Court Commissioner for holding the public auction of the suit shop.

8. The petitioner and the respondent are permitted to participate in the said public auction, if they so desire.

9. The process of auction shall be completed by the learned Executing Court within two months from the submission of certified copy of this order.

10. After the public auction and on receiving the total amount of consideration, the same shall be permitted to be withdrawn by the petitioner and the respondent to the extent of 50% each for the satisfaction of decree.

11. Needless to mention that this Court has not dealt with and considered the issue as regards mesne profit.

**[ANIL S. KILOR, J.]**

SACHIDANAND  
KUTTAN NAIR

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by  
SACHIDANAND  
KUTTAN NAIR  
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