

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

Writ Petition No.7993/2019

(Niyamat Mohommad Khan Pathan V M/s Shriram Transport Finance Com. Ltd and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. S.O. Ahmed, Adv for petitioner.
Mr. M.A. Randive, Adv for resp. no.1.

CORAM : AVINASH G GHAROTE, J.
DATE : 20-03-2023

Heard the learned Counsel for the parties.

2. The petition challenges the order dated 30-09-2019 passed on Exhibits-42 and 65, allowing the applications to send the judgment debtor to civil prison for not complying with the judgment and decree. It is contended, that there is no inquiry to indicate that the judgment debtor was having sufficient means to pay the decretal amount inspite of which the same has not been held and therefore there was the requirement of Order 21 Rule 30 of the Civil Procedure Code, had come into play.

3. Mr. Randive, learned Counsel for the respondent no.1, does not dispute that inspite of several applications filed to place on record the details of the property and means of the judgment debtor no.1 to pay

the decretal dues, no such material was placed on record (pages 33 and 34).

4. The impugned order also does not indicate any enquiry being made in this regard, but merely proceeds upon a presumption as is indicted by perusal of para 6 thereof. In view of which, the same cannot be sustained and the order impugned in this petition is quashed and set aside and the matter is remanded back to the Executing Court to make a proper inquiry regarding the means possessed by the judgment debtor no.1/petitioner to honour the decree and pass order in this regard.

4. Petition is accordingly disposed of in above terms. No costs.

JUDGE