



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7509 OF 2024

Nashik Diocesan Council Trust Through Its Trustee
Vinayak Kamlakar Pandit

VERSUS

Shaikh Chhotubhai Kankarbhai Deshmukh Died Through Lrs
Tamizbi Chhotubhai Deshmukh And Others

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Mr. V. S. Bedre, Advocate for the Petitioner

Mr. G. B. Rajale, Advocate for Respondent No. 3/a

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CORAM : R.M. JOSHI, J

DATE : JULY 22, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. It is all time grievance of litigants that it is easy to obtain a decree but difficult to get fruits of decree by executing the same. This is a classic example which shows that a decree is passed in the year 2003 and even after lapse of 21 years, it cannot be executed.

3. The facts as they appear on record can be narrated in brief as under:

Respondents filed Special Civil Suit No. 426/1996 in respect of suit property bearing no. S. No.

104 against the Petitioner/Trust. It came to be decreed on 28.08.2003 whereby Defendant No. 1 to 8 and 54 to 65 were ordered to handover possession of Survey No. 104/B to consisting area of admeasuring 2H 66R situated at Savedi, Ahmednagar to the Plaintiff. This judgment and decree was challenged by filing first appeal unsuccessfully. Undisputedly, the decree has been upheld till the Hon'ble the Supreme Court. In order to execute the said decree, original Plaintiff/Decree holder filed Special Darkhast No. 137/2004. In the said Darkhast, application Exh. 747 came to be filed by the Petitioner claiming himself to be one of the trustees of the Trust and seeking intervention therefor. Since the application is rejected by the Execution Court, present Petition is filed.

4. The judgment debtor who has caused appearance in Darkhast of year 2004 has filed application after 20 years raising objection to the executability of the decree on the ground that the suit is filed for recovery of the land and as such, the decree cannot be executed as the superstructures are existing thereon.

5. Learned Counsel for Petitioner submits that

Execution Court ought not to have rejected the application for the reason that number of applications were filed by the obstructionist on the similar ground and instead the Court should have dealt with the objection raised by the Petitioner and decided the said application. Thus, it is his submission that merely because period of 20 years has lapsed, objection raised could not have been decided in this manner.

6. Learned Counsel for Respondents has drawn attention of the Court to various litigations in respect of suit property including order passed by this Court in Writ Petition No. 4630/2007 rejecting contentions raised by the judgment debtor in respect of execution of decree on the ground that the suit land now consists structures thereon. It is his submission that all attempts were made for all these years by judgment debtor to ensure that the decree is not executed and that such application ought to have been rejected by the Execution Court with heavy cost and not nominal cost of Rs.10,000/- imposed on Petitioner.

7. As recorded herein above, suit is decreed on 28.08.2003 and the said judgment and decree is

confirmed up to Supreme Court. Execution proceedings came to be filed in the year 2004. Record indicates that number of persons filed application one after another in order to ensure that decree is not executed by hook or crook. Present Petitioner who is judgment debtor and had caused his appearance in the said proceeding earlier, after lapse of 20 years filed applications Exh. 764 and 770 seeking dismissal of the execution proceedings on the ground that on the suit property the trust has made construction wherein a school and college are being run.

8. Though, it is sought to be argued that Execution Court ought to have decided applications on merit and not being done so, but the impugned order shows that Execution Court has also taken into consideration merit of application filed before it. Reference is made to the previous objections raised and orders passed from time to time. Perusal of judgment of this Court in Writ Petition No. 4630/2007 dated 03.04.2009 clearly indicates that very same issue of construction being carried out over the suit property has been raised and dealt with in paragraph 25 of the

said judgment, which reads thus:

25. *It has also been urged that during the period of continuance of lease, judgment debtor have raised construction over the disputed property. There is no decree passed by the trial Court in respect of structures and as such, decree is not capable of being executed. Reliance is placed by Respondents on a judgment in the case of Khimjee Thakarsee Vs. Pioneer Fibre Co.Ltd., reported in AIR 1941 Bombay 337, wherein it has been held that:*

. "Having regard to the obligation to deliver over possession at the determination of the tenancy the lessees could remove the structures on and not after determination of the tenancy. Having failed to remove the same on the determination of the tenancy they lost not only their right to remove the structures after the determination of the tenancy but also all right, title and interest in those structures."

9. Thus, there is no substance in the contention of Petition that this issue is being raised for the first time and therefore, ought to have been dealt with in detail by Execution Court. Undisputedly, judgment of this Court dated 03.04.2009 has been upheld by Hon'ble Supreme Court. Thus, there could not have been order passed by Execution Court contrary to the judgment of

this Court, which is confirmed by Supreme Court.

10. It is argued on behalf of Respondents that the Execution Court may be restrained from entertaining further applications in Execution proceedings. Such blanket directions cannot be issued by this Court. It is always within discretion of the Court to entertain application as per law. However, if the Execution Court finds that there is abuse of process of law by filing any application, such attempt should be dealt with iron hands and where should be application is found malafide or abuse of process of Court, it be dismissed with heavy cost to set example to others not to meddle up with Court process.

11. Having regard to the aforestated discussion, no perversity found in the impugned order passed by Execution Court. Hence, Petition stands dismissed with cost in cause.

(R. M. JOSHI, J.)

Malani