



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6364 OF 2024

Tukaram Trimbak Kolhe

VERSUS

Padma Pandurang Rewalkar And Others

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Mr. S. S. Thombre, Advocate for the Petitioner

Mr. A. S. Kulkarni, Advocate for Respondent Nos. 1 to 4

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CORAM : R.M. JOSHI, J

DATE : JULY 01, 2024

PER COURT :

1. By consent of learned Counsel for Petitioner and Counsel for Respondent Nos. 1 to 4 heard finally.

2. Petitioner who is not a judgment debtor in RCS No. 355/1982 has preferred application Exh. 303 before the Execution Court contending that he has purchased the property in question from the decree holder on the basis of agreement to sale. He also had already filed suit for specific performance of contract against decree holder. By this application, it was prayed by the Petitioner not to execute the decree to the extent of the construction carried out by the Petitioner on property in question. Application is opposed by decree holder. Learned Trial Court rejected the application

with following observations:

2. *In view of detail order passed on Exh. 265 and Exh. 280, darkhast pending since long and considering ratio laid down in para no. 12 in the judgment of Brahmdeo Chaudhary versus Rishikesh Prasad Jaiswal and another [(1997) 3 SCC 694], applicant/obstructionist, his application, objection and his right to object is presumed to be given up, as he reside in the same vicinity and shall be aware of the possession warrant issued frequently.*

3. Admittedly, Petitioner was not party to the execution proceedings when Exhs. 265 and 280 were disposed of. Learned Execution Court observes that since the Petitioner resides in the vicinity he should be aware of the possession warrant issues frequently. By no stretch of imagination this can become a ground for rejecting his application.

4. Learned Counsel for contesting Respondents submits that if all the facts and circumstances of the case are considered, then the order impugned does not deserves interference.

5. Nothing is reflected from the impugned order in order to ascertain the said submissions of learned

Counsel for Respondents. Having regard to the fact that the application is rejected with observations which are not tenable, the order impugned cannot sustain.

6. It would be in the interest of parties that Exh. 303 is decided fresh by the Execution Court. Hence, Petition is allowed. Impugned order dated 10.05.2024 passed below Exh. 303 is set aside. Application Exh. 303 is relegated back to the Execution Court for its decision afresh. Consequently, order passed of issuance of warrant to take possession of the property in question of Petitioner herein, the said order shall stand stayed till decision of Exh. 303.

(R. M. JOSHI, J.)

Malani