



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8898 OF 2023

Municipal Corporation Aurangabad Through Its
Commissioner Adminsitator

VERSUS

Aba Raising Lokhande Dead Throguh Gpa Paraji Aba
Lokhande

- Mr. A. P. Bhandari, Advocate for the Petitioner
- Ms. S. G. Sonawane, Advocate for the Respondent

CORAM : R.M. JOSHI, J

DATE : NOVEMBER 19, 2024

PER COURT :

1. This Petition takes exception to the order dated 28.09.2022 whereby the learned Execution Court has allowed application for amendment under Order VI, Rule 17 CPC whereby the decree holder is permitted to incorporate the reliefs which were never granted by the Trial Court while passing the judgment and decree.

2. Learned Counsel for the Petitioner raises objection with regard to the impugned order firstly on the ground that the order is unreasoned. According to him, Execution Court cannot go beyond the decree and order passed by the Execution Court definitely was

beyond decree and the prayers made by the decree holder which was not part of the decree are sought, which is impermissible in law.

3. Learned Counsel for the Respondent/Decree Holder supported the impugned order by contending that pursuant to the decree of injunction passed by the Trial Court, the present Petitioners have caused damage to the compound wall, as such, reconstruction thereof would be deemed to be part of the decree and executable.

4. The law on the point of the powers of the Execution Court are fairly settled to say that the Execution Court is not permitted to go beyond the decree. Thus, this Court finds substance in the contention of learned Counsel for the Petitioner that the amendment permitted by the Execution Court with regard to the damages, construction of the wall, etc literally amounts to passing of fresh decree by Execution Court, which is not within its jurisdiction.

5. Though learned Counsel for the Respondent has

drawn attention of the Court to Section 47 of the CPC, a bare perusal of said provision indicates that issues with regard to the execution of decree are to be decided by the executing Court and not by a separate suit. This however does not give power to Execution Court to pass any further decree. Allowing application for amendment practically amounts to passing of decree by Execution Court, which is not permissible in law.

6. In view of the above, Petition stands allowed in terms of prayer clause 'B'. Impugned order stands set aside.

7. Needless to say that remedy, if any, available for the Respondent for recovery of the losses caused, can be availed in accordance with law.

(R.M. JOSHI, J.)