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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7072 OF 2017

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Shrikant Narayan Mane

... Petitioner

V/s.

Khalil Ahmed Yusuf Fakir & Anr.

... Respondents

Mr. Kalpesh U. Patil for the petitioner.

Mr. Kayval P. Shah for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 26, 2024

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. The challenge in this writ petition under Article 227 of the Constitution of India is to an order dated 24 October 2016 passed by the learned Joint Civil Judge Junior Division, Karad, rejecting the petitioner's application under Section 47 read with Order 21 Rule 101 and Section 151 of the Code of Civil Procedure, 1908 ("CPC").
3. The petitioner, who is the plaintiff, filed Regular Civil Suit No. 82 of 2002 for a mandatory injunction to remove ditches in suit property 1(c), as described in paragraph 1 of the plaint. By judgment and decree dated 20 November 2008, the Trial Court decreed the suit and directed defendant No. 1 to fill up the ditches

in the suit property and restore it to its original condition through a mandatory injunction.

4. Regular Civil Appeal No. 155 of 2008 filed by defendant No. 1 was dismissed by the judgment and order dated 30 July 2012. Furthermore, Second Appeal No. 987 of 2012 was dismissed by this Court on 8 January 2013. Thus, the decree attained finality and was binding on the parties.

5. Consequently, the petitioner filed Regular Darkhast No. 4 of 2011 for execution of the decree. During the execution proceedings, the petitioner moved an application for the appointment of a Court Commissioner to ascertain the existing condition of the ditches in suit property 1(c).

6. Subsequently, on 21 July 2015, during the pendency of the execution proceedings, the petitioner filed an application under Section 47 read with Order 21 Rule 101 and Section 151 of the CPC, seeking the removal of woods, a temporary tin shed, and other material, and for restoration of the suit property to its original position. This application was contested by defendant No. 1, who argued that the relief sought exceeded the scope of the decree. By the impugned order, the Trial Court rejected the petitioner's application, holding that the execution of the decree for mandatory injunction could not encompass the removal of woods, a temporary tin shed, or other material, as this relief was beyond the decree's scope.

7. I have heard the learned advocates for the parties. Mr. Shah, learned advocate for the contesting respondent, reiterated that the

relief sought by the petitioner was beyond the decree's scope, which was restricted solely to the removal of ditches over suit property 1(c). Accordingly, the Executing Court rightly rejected the application.

8. On perusal of the decree and the plaint, I find that the decree passed by the Trial Court and confirmed up to this Court explicitly directed defendant No. 1 to restore the possession of the suit property 1(c) by removing the ditches. The decree's intent was to restore the property to its original state, and this obligation necessarily includes removing impediments introduced by the judgment-debtor that obstruct compliance with the decree.

9. It is well-settled law that an Executing Court is tasked with ensuring the decree's enforcement in letter and spirit. The Executing Court is not to venture into the merits of the decree but must implement it fully, ensuring that its object is achieved. While an Executing Court cannot alter or go behind the decree, it is empowered to address any post-decree changes or actions by the judgment-debtor that impede the decree's execution. The Executing Court has the inherent authority to adopt all measures necessary to give effect to the decree. This includes dealing with subsequent obstructions or alterations made by the judgment-debtor that defeat the decree's purpose.

10. The changes made by the judgment-debtor in the suit property, such as placing woods, a temporary tin shed, and other materials, are prima facie attempts to defeat the decree's intent. Such actions cannot be allowed to frustrate the mandate of the

Court. Restoration of the original state of the suit property is inbuilt in the decree for mandatory injunction, and any impediments created post-decree must be addressed by the Executing Court to give full effect to its terms.

11. The powers of the Executing Court to remove post-decree changes are further supported by the doctrine of *actus curiae neminem gravabit* (an act of the court shall prejudice no one), which emphasizes that the execution process must not be rendered ineffective due to subsequent actions of the judgment-debtor. The Executing Court must ensure that no party takes advantage of its own wrong by altering the status of the subject matter post-decree in a way that undermines the decree's enforceability.

12. Additionally, Section 47 of the CPC empowers the Executing Court to decide all questions relating to the execution, discharge, or satisfaction of the decree. This provision gives the Court the authority to interpret and enforce the decree comprehensively, including addressing any post-decree acts that hinder its execution. The placement of woods, temporary tin sheds, or other materials amounts to a deliberate attempt to alter the nature of the suit property and evade compliance with the decree. The Executing Court has a duty to order the removal of such obstructions to ensure the decree's implementation. Therefore, it is incumbent upon the Executing Court to adopt all necessary measures to restore the suit property to its original condition as envisaged by the decree. This power is not only incidental to the Court's authority but also essential to uphold the rule of law and prevent a miscarriage of justice.

13. At this stage, the learned advocate for respondent No. 1 submits that respondent No. 1 has filed a separate suit against the petitioner for injunction, which remains pending. This Court clarifies that the disposal of the present writ petition shall not prejudice the rights of the parties to pursue the said suit independently in accordance with the law.

14. Hence, the following order:

a) The impugned judgment and order dated 24 October 2016 passed by the learned Joint Civil Judge Junior Division, Karad, below Exhibit 41 in Regular Darkhast No. 4 of 2011 is quashed and set aside.

b) The application filed below Exhibit 41 in Regular Darkhast No. 4 of 2011 stands allowed.

c) The Executing Court is directed to expedite the execution proceedings and complete the same within three months from the date of receipt of this order.

15. The writ petition is disposed of in the above terms. No costs.

16. Rule stands discharged accordingly.

(AMIT BORKAR, J.)