

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1116 OF 2024

Usha Shrikrishna Bhide & Ors.	Petitioners
V/S	
Vinaya Vilas Bhagwat	Respondent

**WITH
CONTEMPT PETITION NO.301 OF 2023**

Usha Shrikrishna Bhide	Petitioner
V/S	
Vinaya Vilas Bhagwat	Respondent

**WITH
WRIT PETITION NO.12852 OF 2015
WITH
INTERIM APPLICATION NO.3949 OF 2023**

Vinaya Vilas Bhagwat	Petitioner
V/S	
Shrikrishna Ganesh Bhide	Respondent

**WITH
INTERIM APPLICATION NO.1624 OF 2023**

Usha Shrikrishna Bhide	Applicant
IN THE MATTER BETWEEN:	
Vinaya Vilas Bhagwat	Petitioner
V/S	
Shrikrishna Ganesh Bhide	Respondent

Mr. Rohit D. Joshi *for the Petitioner/s in WP Nos.1116 of 2024,
CP No.301 of 2023 and for Respondent in WP 12852 of 2015.*

CORAM: SANDEEP V. MARNE, J.
DATE : 26 NOVEMBER 2024.

P.C.:

1. The Writ Petition No.1116 of 2024 challenges order dated 27 November 2023 passed by 3rd Additional Judge, Small Causes Court and Civil Judge Senior Division, Pune rejecting Petitioner's Application at Exhibit-29 for issuance of possession warrant against Defendant/Judgment Debtor.
2. None appears on behalf of the Respondent. This Court had issued notice to the Respondent on 4 March 2024. Though the Respondent was served with private notice, this Court issued fresh notice by order dated 21 October 2024 because the Court notice could not be issued due to short period. When the Petition appeared on 18 November 2024, an Advocate (Ms. Manisha instructed by Mrs. S.M. Vyas) appeared on behalf of the Respondent. This would indicate that the Respondent is duly served with the notice of the present Petition. Accordingly the Petition appeared on the board on 25 November 2024 when none appeared on behalf of the Respondent and this Court has passed following order:

“None appears for the Respondent. It appears that Ms. Manisha holding for S.M.Vyas, Advocate had appeared on behalf of the Respondent on 18 November 2024. This shows that the Respondent is duly served with notice in the present petition. By way of last chance, hearing of the

petition is deferred till tomorrow. List on **26 November 2024.**”

3. Despite grant of last chance, none appears on behalf of the Respondent once again. This Petition cannot be kept pending waiting for appearance on behalf of the Respondent, who appears to be duly served with a notice in the present Petition. Lack of interest on the part of Defendant to appear in Writ Petition No.1116 of 2024 despite receipt of a notice is further apparent from the fact that her own Writ Petition No.12852 of 2015 has always been listed alongwith Writ Petition No.1116 of 2024. However even in her own Petition, Respondent has failed to appear on previous and today's date of hearing. The Court is therefore constrained to proceed ahead with decision of the Petition in absence of appearance on part of the Respondent.

4. It appears that the Defendant/Judgment Debtor has filed Writ Petition No.12852 of 2015 in this Court challenging the eviction decree as upheld by the Appellate Court. This Court initially granted interim stay to the execution of the decree by order dated 6 December 2017 by recording statement on behalf of the Defendant that the rent shall be continued to be paid punctually and regularly till disposal of the Petition. It appears that the Appellate Court had fixed interim compensation in respect of the suit premises at the rate of Rs.7,000/- per month by order dated 4 August 2015. Accordingly this Court passed order dated 12 April 2022 directing the Defendant to continue to

pay the said amount of interim compensation at the rate of Rs.7,000/- per month. In paragraph 11 of the order dated 12 April 2022, this Court had made it clear that the statement made on behalf of the Defendant for payment/deposit of interim compensation was accepted as an undertaking given to the Court and stay to the eviction decree was continued subject to compliance the said undertaking. The Defendant however failed to comply with the undertaking given to this Court. The order passed by this Court was self-operative and no clarification was required that it got vacated on account of failure on the part of Defendant to pay/deposit the interim compensation. Nonetheless, the Petitioners filed Interim Application No.1624 of 2023 seeking a clarification that the interim protection granted in favour of the Defendant had ceased to operate. Accordingly by order dated 1 September 2023, this Court directed as under:

“8. The order dated 12th April 2022 was very specific and the Petitioner was put to notice that the protection would be continued only subject to compliance of the statement in order dated 12th April 2022. The Petitioner has failed to comply with the said statement, which was accepted by this Court as an undertaking to the Court, without justifiable reasons, An opportunity was given to the petitioner to deposit the arrears within reasonable period but the petitioner has not expressed his inability to deposit the arrears and to pay even part of the interim compensation. Hence, I am not inclined to continue the protection granted to the Petitioner/tenant by order dated 16th December 2017.”

5. On account of vacation of interim stay by this Court vide a order dated 1 September 2022, Petitioners/Plaintiffs filed Application at Exhibit-29 for execution of the decree by issuance

of possession warrant against the Defendant/Judgment Debtor. Curiously the learned Executing Court has proceeded to reject the Application at Exhibit-29 by recording following findings:

“4) It is clear that the stay to the proceeding has been vacated by the Hon’ble Bombay High Court, but the appeal is still pending at Hon’ble Bombay High Court. If the possession warrant is issued, the appeal would be infructuous. It would cause prejudice to the other side. It reveals that the application exh.29 cannot be entertained in the present circumstances to issue possession warrant against judgment debtor. Therefore, considering the above discussion, it reveals that the application exh.29 has no substance. Hence, I pass the following order:

ORDER

- 1) Application exh.29 is hereby rejected.
- 2) No order as to costs. “

6. Once the stay granted by this Court to execution of the decree is vacated, mere pendency of Writ Petition No.12852 of 2015 cannot be a ground for the Executing Court not to execute the decree. The order passed by the Executing Court on 27 November 2023 is clearly erroneous and is liable to be set aside.

7. Writ Petition No.1116 of 2024 accordingly succeeds. Order dated 27 November 2023 passed by the learned Executing Court on Application at Exhibit-29 is set aside. Application filed by Plaintiffs/Decree Holders at Exhibit-29 stands allowed in terms of the prayers made therein. With the above directions, the Writ Petition No.1116 of 2024 is **allowed** with no order as to costs.

8. List the Writ Petition No.12852 of 2015, Interim Applications and Contempt Petition on **14 January 2025**.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.11.29
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