

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6651 OF 2024

Subhash G. Patil & Anr.

.. Petitioners

Versus

Balakrishna Gautam Karande & Anr.

.. Respondents

-
- Mr. Hasmit Trivedi i/by Praxis Legal for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 7, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 21.08.2024.
3. Heard Mr. Trivedi, learned Advocate for Petitioners.
4. By impugned order dated 11.03.2024 passed below Exh. 5 in Execution Application No. 540 of 2017, learned Executing Court has proceeded with the execution of the decree passed in the Suit proceedings in favour of Respondent No. 1.
5. Mr. Trivedi has drawn my attention to the decree passed by the learned Trial Court wherein the decree is passed subject to a specific condition. The decree has been passed directing performance of the MOU but subject to grant of requisite permission from MHADA for development. Admittedly the position that prevails even today is that permission from the Statutory Authority i.e. MHADA has not been

obtained or given. In fact, in absence of the said permission, the decree cannot be executed. In that view of the matter, Execution proceedings have been filed by the decree holder wherein warrant for arrest is requested to be issued against the judgment debtors. This is a case where the judgment debtors on their own motion cannot perform their obligation as stated in the decree unless and until the requisite permission from the Statutory Authority is obtained or fulfilled. The issue involves construction of 3 additional floors in a building, subject to permission from the Statutory Authority in accordance with law. If that be the condition, the Execution proceedings are not maintainable on the basis of the record. Judgment debtors have filed Application to that effect below Exh. 5. Said Application has been rejected by virtue of the impugned order. *Prima facie* I see reason in the submissions made by Mr. Trivedi in so far as maintainability of the Execution proceedings is concerned. In that view of the matter, learned Executing Court is directed not to take any further steps in the Execution proceedings which are filed by the decree holder until the present Writ Petition is determined by this Court. Order dated 11.03.2024 is stayed.

6. Issue notice to the Respondents made returnable on 21.08.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petition along with copy of this order on

the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners.

7. Respondents are directed to remain present either by themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

8. Stand over to **21st August, 2024.**

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR
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RAVINDRA MOHAN
AMBERKAR
Date: 2024.08.07
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