

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

Writ Petition No. 16399 of 2024

Nirmala Vilas Pawar & anr. ... Petitioners
V/s.
Sharad Shankar Garge and others ... Respondents.

Mr. Shriram Kulkarni i/b. Swapnil Mhatre	Advocate for the Petitioners
Ms. Rukmini Khairnar i/b. Nikhil Pujari	Advocate for Respondents

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CORAM : S.M. MODAK, J

DATE : 20 December 2024.

P.C. :

The executing Court has issued a possession warrant as per the provisions of Order 21 Rule 35 of CPC as per the order dated 19 December 2024 (Page No.4 of the praecipe). That is why today urgent circulation is sought.

2. Heard learned Advocate Shri Kulkarni for the petitioners-judgment debtors and learned Advocate Ms. Khairnar for respondents-decree holders. With all his experience and persuasiveness, Mr. Kulkarni tried to convince me that certain indulgence from this Court is required. The point which today he has canvassed is whether the decree is valid decree or whether it is nullity. It is on account of the prohibition contained in Bombay

Rent Control Act, 1947 as prevailing at that time thereby prohibiting the tenant from accepting certain amount towards the surrender of the tenancy. One possession receipt dated 18 August 1997 is annexed to the writ petition.

3. This writ petition is filed challenging the order dated 13 September 2024 below Exhibit 48,51 and 53 in Regular Darkhast No.67/2014. Those orders are annexed to the writ petition. Mr. Kulkarni has invited my attention to one of such order dated 13 September 2024 on Page-82 and another order of same date on Page-86.

One can understand that every litigant has got right to agitate his grievance to the fullest extent. In this case the dispute between the parties have even reached upto the Supreme Court and the decree was passed by the trial Court on 31 March 2001 thereby dismissing the plaintiff's suit and allowing the counter claim of the defendant. The trial Court has held the possession receipt as legal. The plaintiffs-petitioners herein were directed to hand over vacant possession to the defendants within three months. Under the garb of exercising their right uptil now, the judgment debtors are successful in avoiding implementation of this decree. Even during execution certain attempts were made by them, however, they are not successful.

4. For the above reasons, I do not find any indulgence can be

shown by staying the possession warrant. The learned Advocate Shri Kulkarni earnestly requested the Court to grant some time till April so that petitioners can make alternate arrangement. Even he has shown readiness to pay certain charges to the decree-holders. This is opposed on behalf of the respondents-decree holders. The Court can understand, for shifting of articles and other things, a person in possession may need some time but it has to be reasonable. I am inclined to grant three weeks time to petitioners to remove the articles and hand over possession to the respondents.

5. Let the petitioners to file an undertaking before the executing Court within three days. The undertaking should contend assurance to vacate from the premises within three weeks from the date of undertaking and hand over vacant and peaceful possession of the suit premises. Subject to that, the possession warrant is stayed.

6. In view of the above, challenge to the said order does not survive. When this Court is not inclined to stay possession warrant, both of them requested to dispose of writ petition. I find no merit in the petition. **Writ Petition is disposed of.**

(S.M. MODAK, J.)