



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO.2536 of 2024

- 1) **Babjotsingh Bavindarsingh Khanduja,**
Aged about 47 years, Occupation :
Business, R/o The embassy Nagpur
next to Bansi Ngar Metro Station
MIDC, Nagpur. (Ori. JDR. No.2)

.... Petitioner(s)

// VERSUS //

- 1) **Mukesh S/o Nasikrao Tirpude,**
HUF through its Karta Shri. Mukesh
S/o Nasikrao Tirpude Aged about 59
yrs. Occ. Business, R/o Plot No.724,
Darpan Lawn, Byramji Towan, Nagpur
(Ori. Decree Holder)
- 2) **Jagvidya And Sons (Partnership Firm),**
Opp. Puja Ladge, Parasiya Road,
Chhindwara-480 001, also at Plot
No.724, Heritage Lawn, Byramji
Town, Nagpur. (Org. JDR No.1)
- 3) **S. Gurupreet Singh Haranjidar**
Khanduja, Aged major, Occ. Business,
R/o. Plot No.724, Heritage Lawn,
Byramji Town, Nagpur. Also At Hotel
Heritage, behind VCA Stadium, Civil
Lines, Nagpur. (Org. JDR No.3)

... Respondent(s)

Shri Anand Jaiswal, Sr. Advocate a/b Ms Radhika Bajaj, Advocate for the
Petitioner/s

Shri Y.B. Sharma, Advocate for the respondent No.1
shri S.P. Bodalkar, Advocate for the respondent No.3

CORAM : ANIL S. KILOR, J.
DATE : 07.05.2024

ORAL JUDGMENT :

CAW No.1374 of 2024

1. Shri Jaiswal, learned Senior Advocate for the petitioner does not want to press this application and seeks liberty to raise these grounds before appropriate forum.
2. Accordingly, the application is **disposed of** as not pressed. Liberty is granted to petitioner to raise these grounds before appropriate forum by filling appropriate proceedings.

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3. Heard.
4. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

5. The Judgment Debtor (JD) No.2 in Special Darkhast (SD) No.19.2021 has approached this court by filling the present writ petition, challenging the order below Exh.68 Dated 08.04.2024, passed by the 2nd Additional Judge, Small Causes Court, Nagpur, Nagpur, directing to detain the Judgment Debtors in civil prison and to undergo simple imprisonment for two months.

6. The learned Senior Advocate, appearing for the petitioner, submits that no notice was served upon the petitioner at any time, in the execution proceeding. It is submitted that notice was accepted by the JD No.3 and no information was given as regards the same to the petitioner. It is submitted that there is dispute between the JD Nos.2 and 3 and an arbitration proceeding is going on.

7. In the above referred backdrop, it is submitted that JD No.3 never informed the petitioner about the pendency of the proceeding or any order passed in such proceeding, directing the petitioner to file affidavit of Assets and Liability and hence, the compliance was not made.

8. He further submits that such non-compliance cannot be termed as disobedience of any order of Executing Court and hence, Sub-Rule 3 of Rule 41 of Order 21 of the Code of Civil Procedure (CPC) would not come into play and therefore, such order, directing to undergo civil prison is unwarranted and liable to be quashed and set aside.

9. On the other hand, the learned counsel for the respondent No.1/Decree Holder (DH) strongly opposed the present writ petition and submits that, the record shows that the service was made on the petitioner. Hence, the Executing Court has rightly held that there is a disobedience of the order of the Executing Court directing the JDs to file affidavit of Assets and Liability. Accordingly, he prays for dismissal of the present writ petition.

10. On the other hand, the learned counsel for the respondent No.3/JD No.3 is disputing the fact that the respondent No.3 did not give the intimation of service of the notice to the petitioner.

11. Be that as it may, *prima facie*, it appears that the petitioner does not want to run away from the compliance as directed by the

learned Executing Court as regards filing of affidavit of Assets and Liability, which he has undertaken to file on any date, even before the next fixed date.

12. In the circumstances, I am of the opinion that one such opportunity must be granted to the petitioner. After filing such affidavit of Assets and Liability, if the learned Executing Court finds any disobedience on the part of the petitioner, a remedy under Sub-Rule 3 of Rule 41 of Order 21 of the CPC is open for the learned Executing Court.

13. However, for the reasons stated by the petitioner and observations recorded herein above, I am of the opinion that since the petitioner has undertaken to file the affidavit of Assets and Liability before the Executing Court, such opportunity shall be given to the petitioner. Accordingly, I pass the following order:

(i) The writ petition is **allowed**.

(ii) The order below Exh.68 dated 08.04.2024 passed by 2nd Additional Judge, Small Causes Court, Nagpur, in Special Darkhast No.19 of 2021, is hereby quashed and set aside to the extent of the petitioner/JD No.2.

(iii) Parties are directed to appear before the learned Executing Court on **09.05.2024**.

(iv) The petitioner shall file his affidavit of Assets and Liability on 09.05.2024 before the learned Executing Court.

Rule accordingly. No costs.

[ANIL S. KILOR, J.]