



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8246 OF 2023

(Smt. Nirmala Narendra Channe & Ors. Vs. Shri Baburao Tukaram Channe (dead) through his LRs Chandrakant s/o Baburaoji Channe & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri H.V. Thakur, Counsel for the petitioners.

Shri B.M. Kharkate, Counsel for respondent nos. 1 to 3, 5
and 6.

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CORAM : ANIL L. PANSARE, J.
AUGUST 6, 2024

The challenge is to order dated 6/10/2023 passed below Exh. 59 by the Civil Judge Junior Division, Chimur, in Regular Darkhast No. 3/2011, thereby rejecting the application to amend the reply filed by the decree holders - petitioners. The Executing Court has rejected the application on the count that there is no provision to file reply to the objection and further there is no provision to seek amendment in the reply.

2] This finding is erroneous if one goes through Order XXI Rule 101 of the Code of Civil Procedure, 1908 (CPC), which provides that all questions, arising between the parties to a proceeding on an application under Rule 97, shall be determined by the Court dealing with the application so filed and not by a separate suit.

3] In the present case, the objection has been filed by the judgment debtors under Rule 97 read with Rules 98 and 99 of Order XXI of CPC.

4] To my mind, unless reply to the objection is filed, the decree holders will be prevented from answering the averments made in the application/objection. Thus, filing reply will be automatic and in turn, amendment to reply will be entertainable on the basis of the provisions of CPC.

5] In a given case, the trial Court would be justified in rejecting the application seeking amendment but not on the ground that there is no provision to file reply. It is well settled that execution proceedings and objection taken therein are to be decided not by filing separate suit but treating the proceedings itself as a suit. The provisions of CPC will, therefore, naturally apply. Even otherwise, conjoint reading of Order XXI Rules 97, 98 and 101 of CPC would clearly indicate that the Executing Court has to adjudicate the dispute and for that, permission to file reply to the application will be automatic.

6] The reasons assigned in order by the trial Court to reject the amendment are not in consonance with the provisions of Order XXI, particularly Rule 98 read with Rule 101 and, therefore, the order is unsustainable in law.

7] Resultantly, the impugned order is quashed and set aside. The application filed by the decree holders seeking amendment to reply is allowed. Necessary amendment be carried out within 14 working days and amended copy be served on the respondents – judgment debtors. The trial Court shall thereafter proceed to decide

the proceedings in accordance with law. Copy of order be served upon the trial Court forthwith.

8] The Writ Petition is disposed in above terms.

(ANIL L. PANSARE, J.)

Sumit