



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

WRIT PETITION NO. 565 OF 2024

Pralhad s/o Suryabhan Sapkal Vs. Gajanan s/o Hari Marodkar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.J. Thakkar, Advocate for petitioner.
Mr. Arjun Deshmukh, Advocate h/f Mr. R.R. Vyas,
Advocate for respondent.

CORAM : N.R. BORKAR, J.

DATE : 19.12.2024.

This petition takes exception to the order dated 31.10.2023 passed by the learned Civil Judge Junior Division, Motala below Exhibit 1 in Regular Darkhast No.5/2015.

2. The respondent herein has filed the execution proceedings for execution of the decree dated 02.12.1999 passed in RCS No.68/1997. The decree reads thus:

"1) Suit is decreed.

2) Defendant shall hand over possession of 51 R land out of land Gat No.77 to the plaintiff as shown in blue colour in map Exh.42 which shall form the part of the decree hereinafter, within 3 months.

3) Defendant shall also pay Rs.500/- to the plaintiff towards mesne profit prior to filing of suit.

4) The future inquiry be held in respect of mesne profit under Order 20 Rule 12 of the CPC from the date of Judgment till delivery of possession by defendant to plaintiff.

5) Defendant shall pay costs to plaintiff and shall bear his own.

6) Decree be drawn up accordingly.”

3. The learned counsel for the petitioner submits that the execution proceeding is barred by law of limitation and thus, objection was filed before the Executing Court. It is submitted that execution proceedings came to be filed after 16 years whereas the limitation under Article 132 of the Limitation Act is of 12 years.

4. On the other hand, the learned counsel for the respondent submits that appeal was filed against the decree, which came to be dismissed for want of prosecution on 25.11.2004. However, admittedly, the decree was not stayed by the appellate Court. Thus, *prima facie* the execution appears to be barred by limitation.

5. The learned counsel for respondent submits that he be granted time to examine the issue involved in the present petition. At his request, list the petition on **20.01.2025**.

6. Till next date, there shall be ad-interim relief in terms of prayer clause (4).

(N.R. BORKAR, J.)