



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

18 WRIT PETITION NO. 5767 OF 2024

**FARIDA BEGUM AHEMAD SHAIKH AND OTHERS
VERSUS
ABDUL JAVED ABDUL WAHED AND OTHERS**

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Advocate for the Petitioner : Mr.Thole Vinod I.

Advocate for Respondent No.1 : Mr. I.D.Maniyar

Advocate for Respondent Nos. 2 to 4 : Mr. Adesh R.Ban h/f. Mr. R.V.Gore

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CORAM : SHAILESH P. BRAHME, J.

DATE : 17th FEBRUARY 2025

PER COURT :

1. Heard both sides.

2. This petition is directed against order dated 06.05.2022 below Exhibit-83 in Regular Darkhast No. 07 of 2014 rejecting the application of the petitioners/decreed holders for police aid.

3. Petitioners had filed R.C.S No. 24 of 2002 for injunction. It was decreed on 13.07.2006. Being aggrieved respondents had preferred R.C.A No. 234 of 2006 which was dismissed on 03.03.2011. Thereafter, respondent no.1 has filed second appeal which is still pending before the High Court. The decree passed by the trial court has not been stayed by High Court. Petitioners filed R.D.No.07 of 2014. Due to obstruction of respondent no.1 for fencing the property, application Exh.10 was filed in R.D.No.07 of 2014. It was contested by the respondent no.1 and ultimately rejected vide order dated

06.10.2021. Petitioners are again required to file application Exh.83 as he faced similar obstruction from respondent no.2. By impugned order, his application is rejected.

4. Learned counsel Mr. Thole submits that petitioners are armed with decree of injunction and the respondent no.1 is obstructing for erecting a fencing over the suit property. Despite rejection of earlier application, they are entitled to maintain present application. It is further submitted that the respondent no.1 is objecting the application by virtually challenging possession which is not permissible. He would further submit that the approach of executing court is pedantic and over-technical. The petitioner has invoked Order 21 rule 32 read with section 151 of C.P.C seeking police aid which is legal course resorted to by him. Impugned order is perverse.

5. *Per contra*, learned counsel Mr. Maniyar for respondent no.1 submits that already similar type of application was rejected by executing court. However, by resorting to Order 21 rule 32 of C.P.C, petitioner has filed application seeking police aid which is rightly rejected by the impugned order. He would submit that petitioner is not in possession and he is causing obstruction to possession of property of widow of his vendor. It is further submitted that when execution is pending, there is no need to file such type of application. It is further submitted that various proceedings are pending between the parties as well as petitioner and heirs of erstwhile vendor. No interference is called for in the impugned order.

6. Learned counsel Mr. Ban holding for Mr. Gore for respondent nos. 2 to 4 does not support either parties.

7. Petitioner is armed with decree of injunction passed in R.C.S No.234 of 2006. It was confirmed by lower appellate court. Though second appeal is pending in the High Court emanating from the same, no stay is granted to the execution of the decree. Petitioners are entitled to execute the decree and accordingly R.D. No. 07 of 2014 is pending before the executing court.

8. The petitioners faced obstruction in erecting fencing at the instance of respondent no.1 and therefore they were required to file application Exh-10 seeking police aid. It was rejected on 06.10.2021 but they were granted liberty also. There cannot be a *Res Judicata* for filing interim application in the execution proceedings. If the petitioners faced similar obstruction then they are entitled to file application to overcome the obstruction.

9. The execution of decree for injunction is regulated by Order 21 rule 32 of C.P.C. Various modes are prescribed. The power of executing court under sub-rule (5) of Rule 32 of Order 21 are cogent enough to restrain judgment debtor from obstructing the decree holder in executing the decree. If Order 21 rule 32 is read in reference to section 151 of C.P.C, it cannot be said that resorting to police aid is impermissible. Neither executing court nor this Court

can go beyond decree. There are means and ways to execute decree of injunction. If the decree holder is unable to protect the property, and if he is armed with decree of injunction, he has every right to seek police aid. I find that the executing court in paragraph nos. 13 and 14 of the impugned order is over-technical and pedantic.

10. The respondent no.1 is not permitted to raise a defence that petitioner is not in possession of suit land. Neither is he permitted to say that he is causing obstruction or dispossessing widow of erstwhile vendor. The application at Exh.83 is plain and simple seeking police aid due to the obstruction experienced while protecting the property. Therefore, plea raised by the respondents are unsustainable. If the practical approach is not adopted, then it would be only paper decree. So long as petitioners are within bounds of the decree, they are entitled to execute it as well as protect the possession of the property. Impugned order is unsustainable and liable to be rejected. Hence, the following order.

ORDER

- (a)Writ petition is allowed in terms of prayer Clause (B).
- (b)There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

vsj..