



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 5182 OF 2023**

BABU TUKARAM RATHOD AND OTHERS

VERSUS

SHAM BALKRISHANRAO SELUKAR DIED THROUGH LRS
RAJNI SHAMRAO SELUKAR

...

Mrs. Fatema S. Kazi, Advocate for the Petitioners.

Mr. Shrikant Kulkarni, Advocate for Respondent Nos.1(a) to 1(e).

Party in person for Respondent No.1.

...

WITH

**CIVIL APPLICATION NO. 3991 OF 2025
IN WP/5182/2023**

SHAM BALKRISHANRAO SELUKAR DIED THROUGH LRS
RAJNI SHAMRAO SELUKAR AND OTHERS

VERSUS

BABU TUKARAM RATHOD AND OTHERS

...

Mr. Shrikant Kulkarni, Advocate for Applicants.

Mrs. Fatema S. Kazi, Advocate for Respondents.

Party in person for Respondent No.1(b).

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th JUNE, 2025.**

P.C.:-

1. The present Writ Petition is filed impugning order dated 22.11.2022 passed by learned Civil Judge Junior Division, Ambajogai, Dist. Beed in Regular Darkhast No.15/2005, thereby directing petitioner to furnish solvent surety of Rs.1,00,000/- for his appearance before his release and also directing him to furnish cash surety of Rs.10,000/- till furnishing of such solvent surety.

2. The petitioner is defendant/judgment debtor in Regular Civil Suit No.908/1987. The decree of injunction is passed restraining him from obstructing peaceful possession of plaintiffs/respondents

over suit field Block Nos.488, 490, 491 and 595 of village Radi. The aforesaid decree has attained finality.

3. The plaintiffs, alleging breach of injunction by defendants filed Regular Darkhast No.15/2005 before Executing Court. It appears that, defendants avoided service of notice and even after service of notice failed to cause appearance. Later on, the judgment debtor filed his undertaking dated 31.01.2012 assuring Court that he will continue to appear on given dates till disposal of Execution Proceeding. Accepting such an undertaking, he was asked to remain present before Court on 04.05.2012. However, he flouted his own undertaking and remained absent. Therefore, on 22.06.2017 arrest warrant was issued. In pursuance to arrest warrant, judgment debtor was produced before Court. The decree holder deposited amount of Rs.1200/- towards subsistence allowance.

4. It is apparent that, during pendency of enquiry as to the breach of injunction, presence of petitioner was secured after herculean efforts, therefore, while releasing him, Trial Court followed procedure under Order XXI Rule 40 of Code of Civil Procedure. Further considering his past conduct directed him to furnish solvent surety of Rs.1,00,000/- for his presence. Since judgment debtor was not in position to furnish solvent surety on that day, he was released on furnishing cash surety of Rs.10,000/-.

5. The aforesaid order has been challenged in present Writ Petition. Mr. Kazi, learned Advocate appearing for petitioner is absent. However, Smt. Fatema Kazi argued on behalf of petitioners that petitioners are old age persons. The false applications are filed against them alleging breach of injunction order. She submits that there are several litigations pending between parties including Second Appeal before this Court. Smt. Kazi criticized impugned order being contrary to establish provisions of law.

6. Mr. Kulkarni, learned Advocate appearing for respondents highlights conduct of petitioner. He brings to notice of this Court misleading statements made in present Writ Petition stating that Regular Darkhast No.21/2012 and Regular Darkhast No.15/2005 have been filed in respect of one and the same decree. Mr. Kulkarni, submits that after passing impugned order, petitioner again failed to appear before Executing Court, hence, cash security is forfeited.

7. Considering submissions advanced, it can be observed that decree for perpetual injunction is passed in Regular Civil Suit No.908/1987 on 11.03.1994 in respect of suit field Block Nos.488, 490, 491 and 595 of village Radi. The petitioners herein are legal heirs of original defendants. The Regular Darkhast No.15/2005 is filed alleging breach of injunction. The petitioner initially avoided

service of notice. Later on, filed appearance and furnished undertaking to attend execution proceeding, however, again flouted such undertaking and remained absent, which lead to issuance of arrest warrant, which was ultimately executed and petitioner was brought before Executing Court. Therefore, in pursuance to provision contained under Order XXI Rule 40(2), Executing Court find it necessary to impose stringent condition for securing attendance of petitioner in execution, eventually, directed him to furnish solvent surety for Rs.1,00,000/-.

8. Considering reasons as recorded by Trial Court and conduct of petitioner, no fault can be found in directions issued by Executing Court.

9. Further as rightly pointed out by Mr. Kulkarni, statements made in Writ Petition are contrary to factual aspects and certainly employed with intention to mislead this Court. In this background, Writ Petition stands dismissed with cost of Rs.10,000/- (Rs.Ten Thousand only) to be deposited with Executing Court within period of four weeks from today. On deposit of cost, amount be released in favour of respondent nos.1(a) to 1(e)

10. In view of dismissal of Writ Petition, pending Civil Application is also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE