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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.2544 OF 2025 (F)

LALITA A KANKONKAR REP
THR POA ANIL KANKONKAR

... Petitioner.

Versus

MORMUGAO PORT AUTHORITY

... Respondent.

Mr. Ravi Gawas, Advocate for the Petitioner.

Mr. Y. V. Nadkarni with Mr. Nilay Naik, Ms. Simran Khadilkar
and Mr. Kunal Nadkarni, Advocates for the Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 30th September, 2025

ORAL ORDER:

1. This matter was not listed on the Regular Board today. Learned Advocate for the Petitioner sought urgent circulation of this petition in view of the challenge thrown in this petition to an order issuing an execution warrant for demolition of the suit structures, while implementing a Decree. The matter was taken up on urgent basis after notice was waived by learned Advocate Shri Yogesh Nadkarni, who appeared for the Respondent on caveat.
2. Registry to waive office objections and register the matter.
3. By this petition, the orders dated 25.09.2025 and 11.09.2025

passed by the Civil Judge Senior Division, Vasco da Gama in Regular Execution Application No. 21/2013/A has been challenged. Order dated 25.09.2025 rejects an application/objection at Exhibit D-60 dated 11.09.2025 filed by the Judgment Debtor, who is the original Defendant in Regular Civil Suit No.12/2008/C decreed by the Civil Judge Junior Division, Vasco da Gama on 12.04.2013.

4. The petition also impugns order dated 11.09.2025 issuing warrant of demolition and a direction to the Court Bailiff to carry out the demolition at site with the assistance of the Court Commissioner (an Engineer), and a further direction to the Police Inspector of the Mormugao Police Station to provide Police protection to the Bailiff for executing the Decree.

5. This appears to be yet another attempt by the Judgment Debtor to frustrate the execution of the Decree directing demolition of two structures in land under Chalta No. 4 of P.T. Sheet No.8 of City Survey Vasco. The Decree was passed way back on 12.04.2013 and the execution proceedings to demolish these structures have been pending since. On an earlier round of litigation, the Decree Holder had to approach this Court by filing Writ Petition No.365/2025, in which this Court, by Judgment dated 20.02.2025, had specifically held that the suit property, though originally described in the plaint as surveyed under Chalta No.8 of P.T. Sheet No.13 of City Survey Vasco, was later on, during recording of the trial in the suit, allotted

another Chalta No.4 of P.T. Sheet No.8. This finding, as reiterated by this Court in paragraph 4 of its Judgment, was specifically rendered in paragraph 24 of the Judgment and Decree of the Civil Court dated 10.04.2013, in Special Civil Suit No.12/2008/C. Under directions of this Court, in its Judgment of 20.02.2025, the Executing Court was directed to identify the suit structures described in paragraph 31 of the Judgment and Decree, which consisted of newly constructed illegal house encroaching 45 square metres of area and the retaining wall of 10.60 metres length which stood within the land under Chalta No.4 of P.T. Sheet No.8 of City Survey Vasco.

6. Pursuant to these directions, the Executing Court, in exercise of its powers under Order 21 r/w Section 51 CPC, appointed a Commissioner to identify these structures. The Commissioner submitted his report dated 19.08.2025 identifying the illegally constructed house structure of 45 sq. mts. It is at this time that the Petitioner, the Judgment Debtor in the execution proceedings, filed application at Exhibit D-60.

7. This application raises the very same issue of the identification of the suit structures vis-à-vis Chalta No.4 of P.T. Sheet No.8, which the Judgment Debtor claims is not in P.T. Sheet No.8 but is in Chalta No.4 of P.T. Sheet No.13. This is specifically averred in paragraphs 3 and 4 of the application.

8. This contention was not only considered by the Trial Court

whilst rendering the Decree in the suit (paragraph 24 of the Judgment), but was reiterated by this Court in an earlier round of litigation arising from the execution proceedings in its Judgment of 20.02.2025 in Writ Petition No.365/2021. The issue has attained finality and there would be no question of a Court Commissioner being appointed to identify the suit structure vis-à-vis land under Chalta No.4 of P.T. Sheet No.13, as contended by the Judgment Debtor. The Judgment Debtor does not have the right to cross examine the Commissioner as he is only acting as an aid to the Court under Section 51 of the CPC to identify the structures which was part of a Decree. There was no controversy about the fact that the structure of 45 square metres was in fact situated in Chalta No.4 of P.T. Sheet No.8.

9. The impugned order which dismisses this application refers to the earlier proceedings of this Court and the Judgment of this Court in Writ Petition No.365/2021. It has considered the contentions of the Judgment Debtor, in relation to the very same arguments raised for the third time of the location of the suit property and the claim that the suit property is actually in Chalta No.4 of P.T. Sheet No.13. This contention has been rightly rejected since this is the third attempt to reargue the suit and go behind the Decree passed by the Trial Court. This is not permissible and the impugned order must be sustained and the objections at Exhibit D-60 have been correctly rejected.

10. The second order impugned, is one by which the Court had already issued a warrant dated 11.09.2025 directing the Bailiff to execute its order of demolition. This warrant directs the Bailiff to take assistance of the Court Commissioner who has identified the structure to be demolished and to seek assistance of the concerned Police Station i.e. Mormugao Police Station to provide Police protection for carrying out the demolition and executing the Court Decree. The Hon'ble Supreme Court in *Periyammal (Dead) Through Lrs. and Ors v. V. Rajamani and Anr*, 2025 SCC OnLine SC 507 has made reference to the abysmal record of the Executing Courts in performing their functions to bring execution proceedings to an end in the shortest possible time. It has made reference to the inordinate delays in executing decrees of the Court, which result in loss of faith of citizens in the judicial process. There are several directions given by the Supreme Court to Executing Courts in this Judgment, which are referred to below:

"72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.

73. It is worthwhile to revisit the observations in Rahul S. Shah (supra) wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

"42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC,

demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claims to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance,

direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.”

(Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of Rahul S. Shah (supra) requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in Bhoj Raj Garg v. Goyal Education and Welfare Society, Special Leave Petition (C) Nos. 19654 of 2022.

75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.

76. Registry is directed to forward one copy each of this judgment to all the High Courts at the earliest.

77. The Registry shall notify this matter once again after seven months only for the purpose of reporting compliance of the directions issued by us referred to above.

78. In the result, the appeals succeed and are hereby allowed. The impugned judgment passed by the High Court is hereby set aside. The order passed by the Executing Court is also hereby set aside.

79. The Executing Court shall now proceed to ensure that vacant and peaceful possession of the suit property is handed over to the appellants in their capacity as decree holders and if necessary, with the aid of police. This exercise shall be completed within a period of two months from today without fail.”

11. Considering the directions of the Supreme Court in *Periyammal* (supra), absolutely no flaw would be found in the passing of the impugned orders dated 11.09.2025. The execution proceedings have to be brought to a conclusive end in this case by completing the demolition of the suit structures. The Trial Court has correctly issued the directions contained in the order of 11.09.2025, which are required to be followed. Now, as a consequence of the order of 11.09.2025, a fresh warrant was issued directing the Bailiff of the Court to take assistance from the Commissioner appointed by the Court and to ensure demolition of the structures by 26.09.2025. It is stated at the bar, that the officer of the Decree Holder has filed an affidavit before the Executing Court that when the Bailiff went to the site to execute the Decree, a large mob was gathered there which

obstructed the execution of the Decree. A copy of the affidavit so filed before the Executing Court was placed on record.

12. The Roznama entry of the Executing Court of 29.09.2025 records that the warrant of demolition was returned unexecuted by the Bailiff, with a report that around 200 persons along with an MLA Sankalp Amonkar, and the media were present at site and restrained the Bailiff and the Court Commissioner from carrying out the demolition. The Roznama entry also records that an application at Exhibit D-64 was filed by the Police Inspector, Mormugao Police Station informing the inability of the Police to provide Police protection and requested for another date. The Roznama further records that the Court received information from the P.I. of Mormugao Police Station giving the details of the persons seen in a video recorded of the incident and upon receiving authentic copy of the video, has instituted proceeding under Section 15(2) of the Contempt of Courts Act, 1971 r/w the Contempt of Courts (Bombay High Court) Rules, 1994.

13. From a perusal of this observation by the Executing Court, it appears that even the Police force has thrown its hands up and refused to give Police protection to the Court machinery to execute the decree. This situation literally amounts to obstruction of a judicial process and cannot be countenanced. The learned Counsel informed this Court that the matter is now listed on 01.10.2025 when the Court

would take further measures to enforce the Decree.

14. Considering all the aforesaid facts, and the clear obstruction that has been put up to execution of the Decree, the Executing Court shall proceed to effect demolition of the two structures i.e. the house structure of 45 sq. mts and the wall of 10.60 mts. which are referred to in paragraphs 4 and 5 of this Court's Judgment dated 20.02.2025 in Writ Petition No.365/2021 and to take all necessary measures to see that the Decree is implemented.

The P.I. of Mormugao Police Station is directed to take all necessary measures including providing a Police force of adequate numbers, in view of the earlier incident that has taken place, to assist the Bailiff and the Commissioner of the Court to execute the Decree on the date set down by the Executing Court.

15. Since the Police Inspector of Mormugao Police Station has placed on the record of the Executing Court (Exhibit 64), his inability to provide adequate Police assistance to execute the Court Decree, the Superintendent of Police, South Goa, shall supervise the execution of this Decree on the dates set down by the Executing Court and the P.I. of Mormugao Police Station under supervision of the Superintendent, South, shall ensure such execution is brought to its logical conclusion.

16. A report shall be placed on record of this petition by the

Superintendent, South, after the execution is complete.

The Registrar (Judicial) of this Court shall ensure that this order is communicated through email and telephonically to the Superintendent of Police, South Goa and to the P.I. of Mormugao Police Station to ensure directions contained therein are implemented and followed.

17. The Writ Petition is dismissed. No order as to costs.

18. The aforementioned directions shall be followed strictly in their letter and spirit and in terms of the directions given by this Court. An authenticated copy of this order shall be issued to the parties for communication to the Executing Court and to the Police authorities, for due compliance.

VALMIKI MENEZES, J.