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

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 560 OF 2022**

**WITH**

**INTERIM APPLICATION NO.17020 OF 2022**

Mitra Shankar Kakatodi

....Appellant/Applicant

V/s

Sulochana Madhav Patil And Ors

....Respondents

\*\*\*

Mr. Rakesh Bhatkar a/w. Mr. Mohan Devkule & Ms. Smita Samel,  
Advocates for THE Appellant.

Mr. Abhay S. Khandeparkar, Senior Advocate a/w. Mr. Rushikesh G.  
Bhagat, Mr. Rohit P. Mahadik, Mr. Vaibhav Kulkarni, Advocates i/b.  
Khandeparkar & Associates, for Respondent No.1.

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**CORAM : M.M. SATHAYE, J.**

**DATE : 23<sup>rd</sup> June, 2025**

**P.C. :**

1. Heard learned counsel for the Appellant/Obstructionist and  
learned counsel for Respondent No.1/Decree holder.

2. The Appellant is an Obstructionist who has chosen to file  
application under Order 21 Rule 99 of the Civil Procedure Code,  
1908 ('CPC', for short). The application was filed obstructing  
delivery of possession of Suit House No.106, regarding which decree  
for possession dated 16.01.2009 passed in Sp. C.S.No. 98 of 1998  
was put to execution. Though the application is filed under Order 21,  
Rule 99 of the CPC, Appellant claims to be in possession of one  
shop/gala in suit house and prays for protection of his possession. It

is not disputed that the decree which is under execution has attained finality up to the Hon'ble Supreme Court on 13.11.2021.

3. Immediately on same day, on 13.11.2021, the Appellant filed application Ex. 125 claiming through original Defendant No. 1 – Shrikant Shankar Surve, who had sold the subject matter property to Defendant No.2 Sunita Parshuram Surve. The decree under execution grants a declaration that the sale deed executed by Defendant No.1 Shrikant in favour of Defendant No.2 -Sunita is illegal and accordingly, possession was directed to be handed over. In short, the Applicant is claiming through the Judgment debtor.

4. The case of the Applicant is that he was inducted by Defendant No. 1 Shrikant as a tenant of the subject matter shop in 1985, where he is running a bakery and general stores. It is contended that due to close relationship of the parties, the Applicant never demanded the rent receipts nor they were issued.

5. The Executing Court, while deciding the application Ex. 125, in essence, while rendering a finding as contemplated under Order 21 Rule 101 of the CPC, framed an issue as to 'whether the application deserves to be allowed under Order 21 Rule 99?'. From paragraph 16 of the order, it is clear that the Executing Court also considered if the Appellant has been in possession as a tenant, as claimed. After hearing the Appellant / Obstructionist and Decree holder, by an order dated 14.02.2022, the Executing Court rejected the application. It is rejected primarily on two reasons. Firstly that the basis of possession claimed i.e. tenancy through Defendant No. 1

Shrikant, itself has not been proved, in as much as, no document in support of such case, such as rent receipts or other tenancy documents are produced. Secondly, the Executing Court, on appreciation of evidence before it, concluded that there is also no sufficient evidence to conclude that the Applicant is carrying on business of bakery as tenant. A certificate of Sarpanch has been disbelieved on the ground that it is not appropriate document to prove running business. It is held that no tax receipts or Shop Act licence is produced.

6. The Appellant filed the appeal (R.C.A. No.12 of 2022) challenging the said order. After hearing both the sides, appeal has been dismissed under impugned order dated 13.05.2022.

7. In the aforesaid facts and circumstances, the Appellant is before this Court in the Second Appeal requiring to cross the threshold as set under Section 100 of the CPC.

8. Learned counsel for the Appellant submits that the issue, as framed by the Executing Court was not framed separately and the parties were heard and order was passed. He submits that if appropriate issues were framed and opportunity was granted, the Appellant could have filed documents in support of his case.

9. Firstly, as the record stands, the Executing Court has considered the entitlement of the Appellant as claimed vide issue No.1 as it appears to be framed. The record further indicates that Advocate for the Appellant has extensively argued the case. It was argued that the Appellant must be made party to the Execution

Application first, and then, opportunity to lead evidence should be given. The procedure to first make obstructionist a party to Execution and then hear him, as argued, is alien to established procedure. No provision of law is pressed into service to indicate such practice. The Executing Court has rightly rejected this argument. It is material to note that the Appellant himself has filed application Ex. 125. In fact this is an obstructionist, who pleads in his application that due to close relationship, rent receipts were neither demanded nor issued, which is a very convenient stand to take. It was incumbent upon him to produce evidence/documents in support of his case, which he has failed to do. The Executing Court held that there is nothing to even *prima facie* suggest that the Appellant was carrying on business as tenant.

10. The Appellate Court framed point for consideration as to ‘whether the Obstructionist proved that his claim of tenancy is rightful under Order 21 Rule 99 of the Code?’ and after considering the arguments, has concluded that the Appellant is admitting initial ownership of Judgment debtor and is therefore in the shoes of Judgment Debtor. In absence of any indication regarding alleged tenancy, the Appellate Court held that no interference was required in the order of the Executing Court.

11. Learned counsel for the Appellant has relied upon the judgment of **Ballappa Sidhappa Guddodagi & Ors. Vs. Bhagavva Nagappa Magdum deceased through LRS. & Ors. [2015 DGLS (Bom) 47]**, in support of his case. Perusal of the said judgment shows that in the facts of that case, no issue was framed and the Obstructionist

was not permitted to lead any evidence. In the present case, what transpires from the record is the Appellant had argued the matter before the Executing Court to face the issue as framed. Therefore, the facts of the present case being different, the said case-law would not advance the case of the Appellant.

12. Considering the aforesaid facts and circumstances, in my view, no substantial question of law arises. The factual aspects are decisive and the conclusion drawn is a probable one. No perversity is found.

13. The Second Appeal and pending interim application are accordingly dismissed. No order as to costs.

14. All concerned to act on duly authenticated or digitally signed copy of this order.

**(M.M. SATHAYE, J.)**