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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 699 OF 2025

Ganpat @ Ganapati Dattu Katkar ...Petitioner

Versus

Sushilabai Nivruti Mohite ...Respondent

Mr. Dilip Shinde, a/w Mr. Mohan C. K. for the Petitioner.
Mr. Balwant Salunke, for the Respondent.

CORAM: N. J. JAMADAR, J.

DATED: 17th APRIL, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 5th November, 2024, whereby the Executing Court directed issue of possession warrant in terms of the order dated 1st September, 2014 and another order dated 28th July, 2016 passed below application Exhibit-45.
3. By the order dated 28th July, 2016 while issuing possession warrant in respect of the suit properties i.e. Village Panchayat Nos.356 and 357 situated at village Kokale, Taluka Kavthemahankal, District Sangli, the Executing Court had directed TILR, Kavthemahankal to depute a competent person/surveyor to assist the Bailiff to ascertain the property

at site. The said direction was necessitated as on 3rd February, 2016 the Bailiff had reported that there were no boundary marks to identify city survey Nos.73 and 74 and it would be necessary to make a reference to the Deputy Superintendent of Land Records to carry out a survey and submit a report.

4. Mr. Shinde, the learned Counsel for the petitioner, submitted that the Cadestal Surveyor had submitted a report to the effect that it was difficult to identify and demarcate City Survey Nos.73 and 74 and the measurement of City Survey Nos.72, 73, 74, 75 and 76 was warranted and for that purpose the relevant record in respect of those properties was required to be made available. Despite such report, by the impugned order dated 5th November, 2024, the Executing Court directed issue of possession warrant in terms of the order dated 28th July, 2016. It was submitted that the petitioner – judgment debtor has no objection to execute the decree after a joint measurement of City Survey Nos.72, 72, 74, 75 and 76 is carried out.

5. The learned Counsel for the respondent – decree holder invites attention of the Court to an order passed by this Court on 17th March, 2017 in WP/3152/2017. In the said

order, this Court had, *inter alia*, recorded that the maps prepared by the TILR in respect of CTS Nos.73 and 74 were tendered for the perusal of the Court and those maps were taken on record and marked 'X' collectively for identification. A submission was made on behalf of the petitioner that part of the judgment debtor's house falls in City Survey No.73 and rest of the house falls in the road. And, upon instructions, a statement was also made that the judgment debtor would demolish the portion of the house in CTS No.73 and as regards the rest of the house, which substantially falls in the road, reasonable time be given to the judgment debtor to demolish the same.

6. On the basis of the such statement, in that petition, notices were issued and an ad-interim stay was granted.

7. The learned Counsel for the decree-holder submits that the said undertaking to demolish the portion of the house in CTS No.73 has not been complied with.

8. At this stage, it is imperative to note that the purpose of obtaining the assistance of the office of the land records was to identify the property. There is no dispute about the rest of the properties, which were referred to by the Cadestral Surveyor and stated to be required to be jointly measured.

The map which was tendered for the perusal of the Court ("X") clearly shows that the properties CTS Nos.73 and 74 have been separately indicated alongwith the encroachment thereon.

9. If the judgment debtor intends to demolish the structures at his own expenses, at the most the Court can grant reasonable time to the judgment debtor. However, at this length of time, there is no propriety in further delaying the execution of the decree.

10. Resultantly, the impugned order does not warrant any interference in exercise of the supervisory jurisdiction. The petition stands dismissed.

11. By way of indulgence, two weeks time is granted to the petitioner – judgment debtor to demolish the structures.

12. In the event of default on the part of the petitioners to demolish the structure and hand over the possession of the suit properties, the Executing Court shall take steps to execute the decree in accordance with law.

[N. J. JAMADAR, J.]