



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2207 OF 2025**

Balasinha Babasaheb Deshmukh ... Petitioner
versus
Arjun Laxman Pawar and Anr. ... Respondents

Mr. Nitin Gaware Patil with Mr. Jay Salunke, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 20 FEBRUARY 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 19 April 2018 passed by the learned Civil Judge, Sr. Div. Baramati, whereby the application preferred by the Petitioner – decree holder to appoint an officer of the Court to execute and register a Sale Deed so as to execute the decree for specific performance of the contract passed by the Court in Special Civil Suit No.2 of 2008 dated 3 June 2013, came to be rejected.
3. Learned Civil Judge was of the view that the said prayer cannot be granted as it would amount to executing Court going beyond the decree. The provisions contained in Section 151 of the Code of Civil Procedure, 1908 also could not be resorted to, in the absence of a specific direction in the decree.
4. Learned Counsel for the Petitioner submits that even if a decree does not contain such a stipulation, the executing Court could have passed such

direction as that is the only mode in which decree for specific performance can be executed, if the judgment debtor fails to execute instrument in terms of the decree. Attention of the Court was invited to the provisions contained in Order XXI Rule 32(5) of the Code, which empowers the Court to direct some other person, appointed by the Court, to execute an instrument, where the decree is for specific performance of the contract.

5. The Court finds that in the application filed under Order XXI Rule 11(2) of the Code, the Petitioner had indicated the manner in which the decree of the Court was to be executed and the mode in which the assistance of the Court was required to execute the decree.

6. It appears that the attention of the learned Civil Judge was not invited to the provisions contained in Order XXI Rule 32(5) of the Court, and, thus, the learned Judge has proceeded on the premises that such powers could not be exercised under Section 151 of the Code.

7. In the aforesaid view of the matter, it may be expedient to set aside the order and remit the application back to the executing Court to decide the same afresh keeping in view the provisions contained in Order XXI Rule 32(5) of the Code.

8. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.

(ii) The impugned order dated 19 April 2018 stands quashed and set aside.

(iii) The application seeking execution of the instrument by appointing Officer of the Court (Exhibit 15) stands remitted to the executing Court seized with Special Darkhast No.3 of 2018.

(iv) The executing Court shall hear and decide the said application afresh after providing an opportunity of hearing to the parties.

(v) The Writ Petition stands disposed.

(N.J.JAMADAR, J.)