

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1436 OF 2025

Dattatray Gopal Mhatre

..Petitioner

Versus

Neerabai Tukaram Mhatre & Ors

...Respondents

Mr. Rohit D. Joshi, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 7th MAY 2025

P.C.:

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 23rd October 2024 passed by the learned Civil Judge, Junior Division, Alibag, whereby an Application preferred by the Petitioner for stay of the execution of the Decree passed in RCS No. 170 of 2005 purportedly under Order XXI Rule 29 of the Code of Civil Procedure 1908 (“the Code”), came to be rejected.
3. The Petitioner is the Judgment Debtor in RD No. 23 of 2023 in which the decree of eviction passed in RCS No. 170 of 2005 is put to execution. The said decree was confirmed in the Second Appeal by this Court by a judgment and order dated 19th January 2024. It appears

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that, the Petitioner has thereafter instituted a Suit being RCS No. 146 of 2024 for a declaration that the decree passed in RCS No. 170 of 2005 is null and void. The Petitioner has also instituted another Suit being RCS No. 147 of 2024, seeking a declaration that he has perfected his title to the suit property by way of adverse possession. On the strength of the pendency of the these two Suits, the Petitioner preferred an Application for stay of the execution of the decree, under Order XXI Rule 29 of the Code.

4. The learned Civil Judge was of the view that the decree passed in RCS No. 170 of 2005, which has been affirmed by this Court in the Second Appeal, deserves to be executed and if the Petitioner succeeds in the Suits, he could resort to the provisions contained in Section 141 of the Code for restitution.

5. Mr. Joshi, the learned Counsel for the Petitioner, submitted that the Trial Court has erred in observing that the Suits were not pending before the same Court as the execution proceeding and the restitution under Section 141 constitutes an efficacious remedy. It was submitted that the issue of limitation was not decided in the Suit No. 170 of 2005 and the Appeals there-against. Thus the Petitioner has a fair chance to succeed in the Suit. In the event the decree is executed, the Suits would be rendered infructuous.

6. Reliance was placed on the judgment of the Supreme Court in the case of **Shaukat Hussain Alias Ali Akram And Ors**¹ and a decision of this Court in the case of **Upendra Raghuraj Deshprabhu Vs Rajaram Shriram Deshprabhu**.²

7. I have perused the impugned order and the material on record.

8. I am unable to persuade myself to accede to the submission of Mr. Joshi. The ground that the Suit was barred by limitation or for that matter, the Petitioner had acquired title by prescription, are such that they could have been legitimately raised in the Suits and the Appeal. The institution of the these Suits after the dismissal of the Second Appeal is but a desperate attempt to delay the execution of the decree.

9. In these circumstances, the executing court has correctly taken a view that the Petitioner could resort to the provisions contained in Section 144 of the Code, in the event he succeeds in the said Suits.

10. The prayer for stay to the execution of the decree, after almost 20 years of the institution of the Suit, on the grounds which are sought to be urged on behalf of the Petitioner, would delay the execution of the decree indefinitely.

11. I am, therefore, not inclined to interfere with the impugned order in exercise of the supervisory jurisdiction.

12. The Petition stands dismissed.

1 (1972) 2 SCC 731.

2 2002 (3) All MR 817.

13. In the event, the Petitioner applies for time to surrender the Suit property, the executing Court may consider the same and pass appropriate orders thereon.

[N. J. JAMADAR, J.]