

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 2170 OF 2025

Pradip Gajanan Yeola
V/S

....Petitioner

Dnyaneshwar Shankar Gite
(Since Deceased) through His Heirs & Ors

....Respondents

Mr. Dilip Bodake for Petitioner

CORAM : M. M. SATHAYE, J.

DATED : 21st MARCH 2025

P.C.:

1. Heard learned Counsel for the Petitioner.
2. The Petition is filed challenging the order dated 04/12/2024 below Exhibit 619 and order dated 09/12/2024 below Exh. 625 both in Regular Darkhast Application No. 6 of 2023 (Old No. 154 of 1978). The execution is of partition decree.
3. Learned Counsel for the Petitioner pointed out from records that in the said execution application, notice was issued to the Petitioner at the instance of Decree Holder under order 02/11/2020 (page no. 547). He further pointed out that thereafter the Petitioner, being a third person and claiming to be one of the tenants, immediately filed an Application Exh. 502 on 23/01/2020 (page 553) under the provisions of Order 21 Rule 97 of the Civil Procedure Code, 1908 ("CPC" for short). It is asserted that this Application Exh. 502 is pending and is not yet decided. He further pointed out that similar objections raised by other tenants are decided by the

Executing Court under order dated 11/08/2022 below Exh. 354, 355 and 356 in respect of Hemant Vasantrao Nalavade, Amit Vasant Gudaghe and Yashwant Rajaram Jamadade, thereby directing that decree-holders are entitled to recovery of possession of their respect shares as per final decree with symbolic possession of the premises let out to said objectors. He submits that the Petitioner is similarly situated and therefore entitled to the similar protection, in as much as, decree can be executed but with symbolic possession of the premises let out to the Petitioner.

4. It is submitted that under the impugned order dated 04/12/2024 possession warrant have been re-issued and under that possession warrant, actual possession from the Petitioner is likely to be taken, when the Petitioner's substantive application under Order 21 Rule 97 is pending and similarly situated tenants have been granted order of symbolic possession. The second impugned order was passed on review of the first impugned order.

5. Learned counsel Mr. Bodake, on instructions assures the Court that earlier order passed on 13/04/2024 on Exh. 574 is not passed on his Application Exh. 502 and the same is pending.

6. Perused the record.

7. Issue notice to the Respondents, returnable on 21/04/2025. In addition to the Court's notice private notice is permitted.

8. In the meantime, the decree-holder is free to proceed with execution and recover the possession of respective shares as per final decree, however with the symbolic possession of the premises in possession of the Petitioner. This will be subject to further orders that may be passed in this Petition or

on the Petitioner's Application Exh. 502 under Order 21 Rule 97 of the CPC.

9. Learned Counsel for the Petitioner on instructions, states that the Petitioner is ready and willing to proceed with his Application Exh. 502 without delay, as and when directed by the Court.

10. Stand over to 21/04/2025.

(M. M. SATHAYE, J.)