

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5899 OF 2025

Devendra Amarnath Sharma & Ors.	...Petitioners
<i>Versus</i>	
The Board of Trustees at The Port of Bombay & Ors.	...Respondents

Mr. Suraj Gupte a/w. Mr. Akshay Nawar, i/b. Sameer Tendulkar for
the Petitioners.

CORAM: MADHAV J. JAMDAR, J.
DATED : 2nd MAY 2025

P. C.:

1. Heard Mr. Suraj Gupte, learned Counsel appearing for the
Petitioners.

2. By the present Writ Petition filed under Article 227 of the
Constitution of India, the challenge is to the order dated 21st April
2025 passed by the learned Judge, Small Causes Court below
Exhibit-1 in Execution Application No.407 of 2010 in L.E. & C. Suit
No.491/620 of 1980.

3. It is the main contention of Mr. Gupte, learned Counsel
appearing for the Petitioners that the learned Trial Court decreed

the suit on 28th July 1989, the Appeal challenging the same was dismissed on 7th August 2009 and the Execution Application is filed on 18th June 2010. He therefore, states that the Execution Application is beyond limitation as the same should have been filed within a period of 12 years from 28th July 1989 and therefore, the decree cannot be executed.

4. Perusal of the record shows that the present Petitioners who are objecting to the execution of the decree are the Judgment Debtors. The Respondents i.e. Plaintiffs filed L.E. & C. Suit No.491/620 of 1980 on 28th July 1980. The said suit was decreed on 28th July 1989. The said decree was challenged by the present Petitioners by filing Appeal No.530 of 1989 and the said Appeal was dismissed on 7th August 2009. It is settled legal position that once the Appellate Court passes any order either affirming, modifying or reversing the decree passed by the Trial Court, the said decree merges with the decree passed by the Appellate Court. As held by the Supreme Court in the decision of ***Ram Lal vs. Jarnail Singh***¹, wherein in paragraph No.37, it is observed that the doctrine of merger is founded on the rationale that there cannot be

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more than one operative decree at a given point of time. The doctrine of merger applies irrespective of whether the Appellate Court has affirmed, modified or reversed the decree of the Trial Court.

5. Thus, it is clear that the learned Executing Court is executing the decree dated 28th July 1989 passed by the learned Trial Court as confirmed by the learned Appellate Court on 7th August 2009. The decree passed by the learned Trial Court on 28th July 1989 has merged with the decree dated 7th August 2009 passed by the learned Appellate Court. Therefore, Execution Application filed on 18th June 2010 is within limitation.

6. Thus, there is no substance in the contention raised by the learned Counsel appearing for the Petitioners.

7. Accordingly, the Writ Petition is dismissed with cost of Rs.25,000/- to be paid by the Petitioners to the Respondents within a period of 4 weeks from today.

[MADHAV J. JAMDAR, J.]