



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 313 OF 2025

(Rambhau s/o Daulatrao Patil & Anr. Vs. Girdhar Fakirchand Agrawal)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Dr. R.S. Sirpurkar, Counsel for the petitioners.
Mr. S.A. Mohta, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
APRIL 28, 2025

On 26/3/2025, following order was
passed :

*“On 20/1/2025, following order was
passed :*

“Heard.

2. *The petitioner/judgment debtors are aggrieved by the order passed below Exh.47 and 48 by the Executing Court. Issue that was raised before the Executing Court was that the judgment debtors had proved the payment of certain amount which is subject matter of the decree and thus, ought to be adjusted in terms of Sub-Rule 2-A of Rule 2 of Order 21 of the Code of Civil Procedure. It inter alia provides that the payment or adjustment if proved by documentary evidence may be adjusted.*

3. *In the present case, the petitioner has relied upon the judgment dated 02.03.2024 passed by the learned Judicial Magistrate First Class, in SCC No.6500/2004, in the proceedings under Section 138 of the Negotiable Instrument Act. The petitioner intends to rely on the findings rendered by the Court to the extent that the respondent (complainant therein) has received the*

amount of the cheque before encashment.

4. The trial Court, however, has rejected the application on the ground that the payment is not certified by the decree holder.

5. Sub-Rule 2-A of Rule 2 of Order 21 provides that judgment debtor may inform the Court of such payment and apply to Court to issue a notice to decree holder to show cause why such payment or adjustment should not be recorded as certified. Thus, it appears that where the claim is proved by documentary evidence, the decree holder may apply to issue notice to the decree holder calling upon him to show cause why such payment should not be recorded as certified.

6. Issue notice to the respondent, returnable in three weeks.

7. In the meantime, there shall be stay to civil proceedings being Special Darkhast No.06/2019 pending before the learned Joint Civil Judge Senior Division, Akola.”

2] As could be seen, the issue revolves around the claim of the petitioners/judgment debtors that they had proved payment of certain amount, which is the subject matter of decree and, thus, ought to be adjusted in terms of sub-rule (2A) of Rule 2 of Order XXI of the Code of Civil Procedure, 1908 (for short “the Code”).

3] Having heard both sides and having gone through the record, it appears that the trial Court has dismissed the suit filed by the respondent, however, the First Appellate Court, vide judgment and order dated 1/1/2019, allowed the appeal and, thus, decreed the suit holding the petitioners liable for payment of Rs.20,00,000/- approximately.

4] The petitioners tried their luck in Second Appeal, but in vain. The Second Appeal

came to be dismissed on 9/8/2023. Thus, the decree has attained finality on 9/8/2023.

5] Keeping in view the date of decree, viz., 9/8/2023, the provision under Rule 2 of Order XXI of the Code, will have to be given effect to. Sub-rule (1) of Rule (2) of Order XXI provides that where any money payable under a decree is paid out of Court, in whole or in part, to the satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the Court, whose duty it is to execute the decree and the Court shall record the same accordingly.

6] Thus, sub-rule (1) takes into account the money payable under a decree if is paid out of Court to the satisfaction of the decree holder. Thus, there will be three requirements. First is, the money should be payable under a decree, which can be said to be payable only once the decree is passed, second is, the money is paid out of Court in whole or in part, and third is, it is so paid to the satisfaction of the decree holder.

7] In the present case, the petitioners are relying upon the judgment dated 2/3/2024 passed by the Judicial Magistrate First Class (Court No.1) Akola, in the proceedings under Section 138 of the Negotiable Instruments Act, 1881, initiated by the respondent against the petitioners. It appears that the petitioners issued three cheques amounting to Rs.5,00,000/-. The petitioners' defence was that the amount payable under the Negotiable Instrument was, in fact, paid. The petitioners appear to have proved payment of said amount, and accordingly, the learned Magistrate was pleased to acquit the petitioners.

8] I have gone through the judgment. It indicates that the petitioners had paid the amount on 19/5/2003, 24/5/2003 and 7/7/2003. This aspect has been noted in the judgment passed by the learned Magistrate. The petitioners intend to take aid of the judgment and contend that the payment, so made, was payment of money payable under the decree and has been proved by documentary evidence,

viz., the judgment passed by the learned Magistrate. The question is, can the payment made prior to passing decree be said to be payment made towards money payable under the decree.

9] At this stage, the learned Counsel for the petitioners seeks time to have research on the point.

10] Stand over to 7/4/2025, end of board.

11] Interim relief to continue till next date.”

2] In response to the said order, the learned Counsel for the petitioners fairly submits that remedy will not lie under Order XXI Rule 2 of the Code of Civil Procedure, 1908, and accordingly, seeks permission to withdraw the petition and to avail appropriate remedy as is available in law.

3] Permission is granted. The petition is accordingly dismissed as withdrawn with liberty as prayed for, if there is no other legal impediment.

(ANIL L. PANSARE, J.)

Sumit