



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

WRIT PETITION NO. 736 OF 2025

(Narayan Pandhari Wazire Vs. Prakash Shankar Manatkar & Anr.)

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

Court's or Judge's orders.

Mr. O.Y. Kashid, Counsel for the petitioner.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 11, 2025

Heard.

2] Respondent no.1 – plaintiff filed suit against the petitioner – defendant for declaration and mandatory injunction, being Regular Civil Suit No. 188/2005. The injunction was sought on the ground that the petitioner's fabrication unit is situated in residential locality and is functioning without permission of the appropriate authority and that the work carried out by the petitioner was unhygienic and is polluting the adjoining locality. The suit came to be dismissed vide judgment and decree dated 17/11/2009. Respondent no.1 approached the Appellate Court in R.C.A. No. 173/2009 under Section 96 of the Code of Civil Procedure, 1908 (for short "the Code"), which was pleased to allow the appeal. The Appellate Court's order reads thus :

"ORDER

- 1. The appeal is partly allowed.*
- 2. The judgment and decree passed by the learned Civil Judge is hereby quashed and set aside.*
- 3. The suit is partly decreed.*

4. The defendant is hereby restrained from carrying out the work of fabrication and welding on plot No. 6-B which is adjoining to the house of the plaintiff, unless he obtains due permission from the Gram Panchayat, Khadki as well as from Pollution Control Board.

5. Under the peculiar circumstances of the case, parties are left to bear their own costs in this appeal.

6. Decree be drawn up accordingly.”

3] As could be seen, the petitioner – defendant (Judgment debtor) was restrained from carrying out the work of fabrication and welding on plot no. 6-B, which is adjoining to the house of respondent no.1 – plaintiff unless he obtains due permission from Gram Panchayat – Khadki as well as from Pollution Control Board.

4] It appears that the petitioner continued the work and, therefore, respondent no.1 filed execution proceedings (Annexure – 1). Respondent no.1 sought assistance from the executing court to restrain the petitioner from carrying out the fabrication and welding work on plot no. 6-B until the aforesaid permissions are obtained, and if the petitioner – judgment debtor did not obey the order of the Court, he may be detained in civil prison or his properties be attached or both the reliefs be granted.

5] The executing court, vide impugned order dated 28/1/2025, allowed the prayer made by respondent no.1 to attach the properties of the petitioner under Order XXI Rule 32 of the Code. The order reads as under :

“ORDER

- 1. Application at Exh. 53 is allowed.*
- 2. The movable property of the judgment-debtor located on Plot No. 6-B shall be attached under Order XXI Rule 32 of the CPC to compel compliance with the decree.*
- 3. The bailiff is directed to execute the warrant of attachment and is authorized to break open the lock of the property, if necessary, to carry out the attachment.*
- 4. The judgment-debtor is warned that further non-compliance with the decree will result in more severe action, including detention in civil prison, as provided under Order XXI Rule 32 of the CPC.*
- 5. The decree-holder is directed to assist the bailiff in identifying the property of the judgment-debtor on the said plot for attachment.*
- 6. The decree-holder's application at Exhibit 52 for detention of the judgment-debtor in civil prison is rejected for the present. However, liberty is granted to the decree-holder to file a fresh application for detention if the judgment-debtor continues to disobey the decree even after attachment of the property.”*

6] The learned Counsel for the petitioner submits that application for issuance of permission from Pollution Control Board has been submitted by the petitioner on 12/9/2024. He submits that the said application is under consideration. According to him, this application was filed in terms of order passed by this Court in Writ Petition No. 5298/2023.

7] In my view, filing application for obtaining NOC from pollution board is not sufficient. The fact remains that till date, permission from Pollution Control Board is not obtained by the petitioner. So far as permission from Gram Panchayat – Khadki is concerned,

the learned Counsel submits that it has been merged into corporation. If that be so, the petitioner ought to obtain permission from the concerned corporation as well. Having not done so, I do not find any error in the order passed by the executing court. The petitioner has no regards to the order passed by the Court. He should suffer consequences of such conduct.

8] No interference, therefore, is called for in supervisory jurisdiction under Article 227 of the Constitution of India. The petition is dismissed in *limine*. No costs.

9] Copy of order be served on the executing court.

(ANIL L. PANSARE, J.)

Sumit