



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

WRIT PETITION NO. 3364 OF 2020

- Sallauddin S/o Nasaruddin Kazi (dead)
through LRs.
- 1A) Jamirumnisa Salauddin Kazi
Aged About 51 years, Occu : Household
- 1B) Saifuddin Salauddin Kazi
Aged About 36 years, Occ : Service
- 1C) Shahabuddin Salauddin Kazi
Aged About 34 years, Occ : Service
- 1D) Ajharuddin Salauddin Kazi
Aged About 30 years, Occ : Service,
Applicants No.1 to 4 are residents of
Lingufail, Ward No.15, Pulgaon,
Tah.Deoli, Dist. Wardha
- 1E) Nikhat Parveen Amir Khan
Aged About 35 years, Occ : Household
R/o Near Parsopant, Tq. Darwha,
Dist. Yavatmal
- .. Petitioners**

Versus

- Kayyamuiddin S/o Nasaruddin Kazi
Aged about 50 years, Occ : Teacher,
R/o Tiwari Layout, Hinganghat Fail,
Pulgaon, Tahsil Deoli, Dist. Wardha
- .. Respondents**

Mr. Tejas Deshpande, Advocate for petitioner.
Mr. M.M.Agnihotri, Advocate for respondent.

CORAM : SIDDHESHWAR S. THOMBARE, J.

DATED : NOVEMBER 13, 2025

ORAL JUDGMENT

(1) Heard. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

(2) Present petition is directed against the order dated 03/03/2020 below Exh.84 passed by learned Civil Judge, Junior Division, Pulgaon in Regular Darkhast No.08/2020, whereby the application preferred by the respondent was allowed thereby issuing possession warrant in respect of five rooms in the suit property.

(3) Learned counsel for the petitioner submits that the matter went upto this Court and now proceedings are pending for execution of the decree passed in R.C.S. No.20/1996. The decree holder filed an application for restoration of possession of three rooms in addition to the two rooms with respect to which decree was passed. Said application was filed in view of the report received by the bailiff which came to be allowed by the Executing Court and issued possession warrant in respect of five rooms in the suit property.

(4) Learned counsel for the petitioner further submits that the Executing Court cannot go beyond the decree which is placed for execution and as the suit was decreed in respect of two rooms as

prescribed in para 15 of the plaint, the application ought not to have been entertained by the Executing Court and therefore, he prayed to set aside the order. Learned counsel for the petitioner supported the order and relied upon the judgment of Hon'ble Supreme Court in the case of ***My Palace Mutually Aided Co-operative Society vs. B.Mahesh and others SLP (Civil) No. 7015/2022.***

(5) Per contra, learned counsel for the respondent submits that when the initial injunction was sought in respect of entire house, the petitioner restricted his claim in respect of only two rooms. Therefore, the decree in respect of two rooms was passed. When the bailiff went to the spot, he found that the petitioner had encroached upon three rooms. Therefore, he submits that the order passed by the Executing Court is improper in issuing possession warrant of five rooms.

(6) I have gone through the order below Exh.84 passed by the Trial Court in R.C.S.No.20/1996, wherein the Trial Court in para 4 has given following finding :-

4. After giving my thoughtful consideration to the contentions canvassed by the parties on perusal of record and proceeding it depicts that, in M.J.C. No.01/2010 during the cross-examination vide Exh.55 the present Judgment-debtor has admitted the fact that, the three rooms other than suit properties were are in his possession. On perusal of written statement towards the Counter-claim in R.C.S.No.20/1996 the present Judgment-debtor has

specifically admitted that, he was having only two rooms in his possession, as well as he has admitted the fact that, rest of the rooms are in the possession of the present Decree-holder. On perusal of Bailiff report vide Exh.-77 it depicts that on 16/04/2018 while the Bailiff was at the suit property for executing the possession warrant due to the scuffle between Judgment-debtor and Decree-holder, he could not execute the same."

It is clear that the Trial Court passed a decree whereby plaintiff was directed to handover the vacant possession of two rooms prescribed in para 15 of the written statement of defendants No.1 and 2. Thereafter, execution proceeding was filed and the Executing Court ought to have considered the decree passed and it cannot go beyond the decree which is to be executed.

(7) Therefore, only because the bailiff had submitted a report stating that the petitioners have encroached upon three rooms, the Executing Court cannot issue such possession warrant. It is settled principle of law that Executing Court cannot extend the scope of execution proceeding by going beyond the decree. Hence I proceed to pass following order :-

ORDER

1. The writ petition is allowed.
2. The order dated 03/03/2020 passed by the Executing Court below Exh.84 is hereby quashed and set aside.
3. No order as to costs.

The Rule is made absolute in the above terms.

(SIDDHESHWAR S. THOMBRE)