



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

WRIT PETITION NO. 2224 OF 2024

Manoj s/o Shivnarayanji Jaiswal
Aged about 54 years, Occ. Agriculture,
R/o. Ramjibaba Nagar, Morshi,
Tq. Morshi, Dist. Amravati.

.... **PETITIONER**

// **VERSUS** //

Sunanda w/o Sukhdeorao Wankhade
Aged about 64 years, Occ. Housewife,
R/o Ashok Colony, Arjun Nagar,
Amravati, Tq. & District Amravati

.... **RESPONDENT**

Shri A.S. Ambatkar, Advocate for petitioner

Shri P.R. Agrawal, Advocate h/f Shri A.R. Sharma, Advocate for respondent

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 21.04.2025.

(ORAL)JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2. The petitioner in the present matter challenging the order dated 29.02.2024 below Exhibit 89 passed by the learned 9th Joint Civil Judge, Senior Division, Amravati in order 21, Rule 32(1) r/w Section 151 of the Civil Procedure Code filed by the decree holder. The decree holder filed for the execution of the decree passed in RCA No.218/2007. The Judgment Debtor Nos.2 and 3 were restrained from

causing any interference and obstructions to the decree holder's possession over 16 R. land i.e. the suit property, by a decree passed in RCA No.218/2007.

3. It is the contention of the decree holder that the Judgment Debtors have filed an objection petition under Section 47 of the C.P.C. The same was rejected. Thereafter, the Judgment Debtors tried to enter into the suit property of which, report to Police Station Morshi was made. It is contended that they are willing to obey the order passed in RCA No.218/2007. Therefore, the decree holder has filed this application for detaining Judgment Debtor in Civil prison for the enforcement and satisfaction of the decree. The Judgment Debtors have filed their response by raising objections to the application. It is also submitted by the Judgment Debtors that earlier similar application for detaining them in civil prison was rejected. Therefore, principle of *res judicata* will apply.

4. After hearing the parties, the learned 9th Joint Civil Judge Senior Division, Amravati, passed an order allowing the application partly, however directions came to be issued against Judgment Debtor No.3 Manoj Jaiswal.

5. The learned Counsel for petitioner relied on the judgment of this Court in *Bhagwat Appa Chopade Vs. Baba Sadashiv Metkari* reported in **2014 (9) RCR (Civil) 2199**, wherein this Court held that the order of detaining a person in civil prison can only be passed under Order 21 Rule 32 (1) of the C.P.C. by way of last resort. There are other modes prescribed regarding providing an opportunity to the Judgment Debtor to obey the decree, to attach the property if any, and then to consider the question of passing an order of detention in civil prison.

6. My attention is drawn to the fact that in Regular Civil Suit No.30/2014 wherein the present decree holder is the plaintiff and made allegations against the Judgment Debtor No.3 claiming that there was an encroachment over a 40sq. Mtrs area out of property No.206 by Judgment Debtor No.3. The Judgment Debtor No.3 Manoj Jaiswal, against whom the order of detention came to be passed. In view of this pending suit, the issue of encroachment is yet to be finalized. Therefore, interim order is unsustainable in the eyes of law. It is also necessary to note that the court directly passed the order of detention without granting any opportunity by adopting other modes for complying of the decree. As such, impugned order is liable to be set aside. The respondent is at liberty after RCS No.30/2014 is finally decided. Accordingly, I proceed to pass the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order dated 29.02.2024 passed by the learned 9th Joint Civil Judge Senior Division, Amravati below Exhibit 89 in Regular Darkhast No.294/2012 is hereby quashed and set aside.
- (iii) Liberty is granted to the respondent to move the application after the RCS No.30/2014 be decided.
- iv) The learned Trial Court in RCS No.30/2014 pass an order on its own merit without getting influence by any observation made in this petition.

7. The Writ Petition stands disposed of in above terms. No orders as to costs.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare