



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

WRIT PETITION NO. 4463/2025

(M/S HASNATEY TAHERIYYAH FIDAYYAH TRUST, NAGPUR & OTHERS **VERSUS**
GANGADHAR MADHAORAO KUSHPARE)

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

Court's or Judge's order

Mrs. Rashmi Deshpande, counsel for the petitioners.
Shri S.S. Ahmad, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : OCTOBER 13, 2025

Heard the learned counsel for the petitioners as well as the respondent.

2. Petitioners challenge the common order dated 04.04.2025 passed by the executing Court on the applications at Exhibit 19 and 20.

3. The petitioners are the decree holders, who have filed execution proceedings vide S.D. No.51 of 2024 for execution of the judgment and decree dated 30.08.2023 passed in R.C.S.No.315 of 2017 for ejectment, possession and mesne profits. The judgment debtor has filed an objection under Section 47 of the Code of Civil Procedure, 1908 (for short, 'the Code') dated 04.03.2025 at Exhibit 19 and a separate application under Section 151 of the Code dated 04.03.2025 at Exhibit 20 for keeping in abeyance the execution proceedings. The objection as well as the application were strongly opposed by the decree holder and by common order dated 04.04.2025, the objection at Exhibit 19 came to be rejected whereas

the application at Exhibit 20 came to be allowed subject to certain conditions including a condition directing the judgment debtor to deposit an amount of Rupees Two Lakhs in the executing Court. The order rejecting objection under Section 47 of the Code at Exhibit 19 is not challenged.

4. The decree holder has filed the instant writ petition challenging the order below Exhibit 20 and submitted that in view of rejection of the objection at Exhibit 19, the order of keeping the execution proceedings in abeyance passed below Exhibit 20 is unsustainable. The counsel for the petitioners submitted that there is no provision for keeping the execution proceedings in abeyance and particularly in view of rejection of the objection under Section 47 of the Code, the application at Exhibit 20 was liable to be rejected.

5. Shri S.S.Ahmad, learned counsel appeared for the respondent opposed the petition and primarily submitted that the respondent, who is a judgment debtor was not served with any notice in the civil suit and therefore, the judgment debtor has already filed an application under Order IX Rule 13 of the Code which is registered as M.J.C.No.40 of 2024 and which is pending. He therefore submitted that before his application is decided, the execution cannot be allowed to proceed. He submitted that in view of the directions contained in the impugned order, the judgment debtor has deposited an amount of Rupees One Lakh before the executing Court. Apart from this, he made vehement submissions to contend that perusal of the decree dated 30.08.2023 passed in R.C.S.No.315 of 2017 shows that the

suit property is admeasuring 6052 square meters, whereas in execution case, the decree holder is seeking possession of the servant quarter which is admeasuring 180 square feet. He therefore submits that in view of the discrepancy about the description of the suit property as mentioned in the plaint and the schedule of property filed in the execution case, the decree is inexecutable. He submitted that the executing Court cannot rectify the description of the suit property when it is incorrectly described and he relied on a judgment of this Court in ***Krishnayya Parbhaya Chintalwar Versus Meghraj Meghraj Paparam Teli*** [1939 Indian Law Reports 708].

6. In response to this, the counsel for the petitioner submitted that there is no discrepancy at all with respect to the description of the suit property. In support of her submissions, she invited attention to the decree dated 30.08.2023 passed in R.C.S. No.315 of 2017 which mentions description of the suit property in paragraph 2 as follows:-

“2. The plaintiff trust is entitled to get defendant evicted from the suit premises i.e. Municipal Corporation House No.418 admeasuring 6052.00 sq.mtr., Sheet No.18, city survey No.1609 Mauza sitabuldi, situated at Ward No.66, Mount road, Sadar, Civil Lines, Nagpur more particularly described in schedule of plaint.”

She also submitted that the schedule of the plaint describes the suit property as follows:-

“Schedule of Property:- Servant quarter bearing Municipal Corporation house No.418, admeasuring approx.180 sq.ft. Having sheet no.18, c.s. no.1609 of mouza Sitabuldi situated at ward No.66 Mount Road Sadar Civil Lines Nagpur.

EAST : *Vacant land of HTF Trust*
WEST : *Railway Property*
NORTH : *Servant Qtr (Suresh Masram)*
SOUTH : *Servant Qtr (Nanubai Kushpare)’*

7. On the basis of the description of property in the schedule of property attached to the plaint and the decree passed by the trial Court, she submits that the decree is with respect to a servant quarter admeasuring 180 square feet situated on the premises of Municipal Corporation House No.418. She submits that the total area of house is 6052 square meters and the suit for ejectment was filed with respect to the servant quarter admeasuring 180 square feet. She therefore submits that the objection raised by the judgment debtor about discrepancy in the schedule of property is baseless and unsustainable.

8. On careful perusal of the description of the property as described in the schedule attached to the plaint (referred above) and the decree (referred above), I find that the description mentioned in the decree specifically refers to the description of the suit property as mentioned in the schedule of plaint. As such, on conjoint reading of the description of the property mentioned in the decree and schedule of plaint, I find no discrepancy about the description of the suit property. The suit filed by the petitioners was with respect to a servant quarter admeasuring 180 square feet in the premises owned by the petitioner admeasuring 6052 square meters. The decree of eviction is with respect to a servant quarter

and thus, the decree holder is entitled to execute the decree with respect to this property which is properly described.

9. As regards the impugned order, it has to be noted that the application at Exhibit 20 is entertained only because of pendency of the respondent's application under Order IX Rule 13 of the Code. Thus, considering the fact that the application under Order IX Rule 13 of the Code is pending, it is in the interest of justice that the said M.J.C. proceedings be expeditiously decided. The direction to keep the execution proceedings in abeyance without specifying any period is unsustainable and needs to be modified.

10. Hence, the impugned order dated 04.04.2025 passed by the trial Court on application at Exhibit 20 is modified to the extent of Clause 2 (iii) clarifying that the execution proceedings be not kept in abeyance for indefinite period. The directions contained in Clauses (i) and (ii) of paragraph 2 are not interfered. The M.J.C. No.40 of 2024 pending before the Additional Judge, Small Causes Court is directed to be expedited and be decided within two months from today. In view of this, during pendency of M.J.C. no.40 of 2024, the execution of the decree *vide* S.D. No.51 of 2024 be kept pending for a period of two months from today.

11. In view of aforesaid, the writ petition is disposed of. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)