



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

WRIT PETITION NO. 1116 OF 2025

(Shri Bhumendra s/o Tarachand Dongre & Ors. Vs. Dhruveshkumar s/o Girishbhai Patel & Ors.)

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

Court's or Judge's orders.

Mr. A.M. Chandekar, Counsel for the petitioners.

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CORAM : ANIL L. PANSARE, J.
MARCH 3, 2025

The challenge is to order dated 26/11/2024 passed below Exh. 44 by the Civil Judge Junior Division, Deori, in R.D. No. 2/2018. The Executing Court has rejected the application, filed by the petitioners – judgment debtors, under Section 47 of the Code of Civil Procedure, 1908 (for short “the Code”), on the count that the application is not related to execution, discharge or satisfaction of decree, and further that it is barred by limitation.

2] The respondents – decree holders had filed suit for possession and injunction. According to them, the judgment debtors have encroached on their land by erecting Kaccha Jhopada on area admeasuring 0.01 H.R. out of land bearing Gat No. 44/2. The encroachment was shown in the plaint map. The judgment debtors did not appear and, therefore, the suit proceeded *ex parte*. The suit was ultimately decreed partly and the judgment debtors were directed to hand over possession of the suit land, as shown in the map, by removing the construction

within two months. The decree was passed on 20/1/1998. Thus, for last twenty-six years, the decree holders are awaiting fruits of decree.

3] The issue involved will have to be considered in the light of above. The impugned order indicates that the judgment debtors had knowledge of execution proceedings and had appeared on 3/9/2018. They did not file any application, including application under Section 47 of the Code, till 22/6/2024. Thus, for six years of appearance, the judgment debtors were silent.

4] The learned Counsel for the judgment debtors submits that the application was not filed because the judgment debtors had approached the trial Court for setting aside *ex parte* decree. When asked as to what had happened to the said proceedings, the learned Counsel submits that the said application was dismissed as not prosecuted. When further asked as to what was the date of order, the learned Counsel submits that it was dismissed in default on 18/3/2002. He submits that the said order was challenged before the District Court along with application for condonation of delay of around 13 years. The application was, thus, filed in the year 2015, which came to be dismissed, again in default, on 7/1/2017.

5] Thus, it is evident that from the date of appearance in the execution proceedings, the judgment debtors have not filed any application, including application under Section 47 of the Code, for about six years. That apart, if the facts noted above are considered,

it is further evident that the judgment debtors are extremely casual and negligent in pursuing their own cause.

6] The suit proceeded *ex parte*, meaning thereby, that they did not respond to the summons issued by the trial Court. Thereafter, the judgment debtors approached the trial Court for setting aside *ex parte* decree but failed to pursue the cause and ultimately the application came to be rejected as not prosecuted. The judgment debtors then kept quiet for about thirteen years and then approached the Appellate Court against the order of rejection of application for setting aside *ex parte* decree. Even the said appeal came to be dismissed as not prosecuted, which means that the judgment debtors further failed to pursue the cause. The negligence continued in the execution proceedings as well. The end result is that the decree holders are deprived of benefits of the decree.

7] In the circumstances, the finding of the trial Court that the application has been filed belatedly or is time barred appears to me to be a finding, which is in consonance with the material placed before the trial Court.

8] Even otherwise, by filing application under Section 47 of the Code, the judgment debtors are, in a way, trying to challenge the decree. This is so because the judgment debtors have, by filing application, averred that the property under question is not situated in survey no. 44/2. Such a plea, to my mind, could not have been taken

because the finding of the trial Court that the judgment debtors have erected Kaccha Jhopada on land bearing Gat No. 44/2 has attained finality. The trial Court was, therefore, further correct in holding that the application is not related to execution, discharge or satisfaction of decree.

9] No interference is, therefore, called for in the impugned order. The petition is dismissed in *limine*. No costs.

10] Copy of order be served on the trial Court.

(ANIL L. PANSARE, J.)

Sumit