



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1468/2024

Pandurang S/o Bhagwan Tayade,
aged about 67 years, Occupation:
Agriculturist, R/o Kardi, Post. Dhad,
Tah. and Dist. Buldhana.

... PETITIONER

VERSUS

1. Pandhari Bhagwan Tayade, aged
about 46 years, Occupation:
Agriculturist, R/o Kardi, Post. Dhad,
Tah. and Dist. Buldhana.
2. Rameshwar Bhagwan Tayade,
aged about 48 years, Occupation:
Agriculturist, R/o Banai Niwas,
Behind Yedae Lawns, Dhad Naka,
Sagwan Parisar, Tah. and Dist.
Buldhana.
3. Ramrao Bhagwan Tayade, aged
about 50 years, Occupation:
Agriculturist, R/o Kardi, Post. Dhad,
Tah. and Dist. Buldhana.

...RESPONDENTS

Shri N.B. Kalwaghe, Advocate for petitioners
Shri A.S. Manohar, Advocate for respondent Nos. 2 & 3

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

DATE OF RESERVING THE JUDGMENT : 05/03/2025

DATE OF PRONOUNCING THE JUDGMENT: 10/03/2025

JUDGMENT

. **Rule.** Rule made returnable forthwith.

2. Heard learned Counsel for the parties.

3. Present writ petition is filed challenging the order passed by Civil Judge Senior Division Buldhana, in Misc. Civil Application No. 5/2023 dated 22/01/2024, whereby, learned CJSD rejected the application for restoration of execution proceedings.

4. The petitioner and respondents were having seven agricultural lands which came to be acquired for Kardi project. Award came to be passed by Land Acquisition Officer on 12/06/2015. Petitioner and Respondents preferred reference under Section 18 of the Land Acquisition Act which was referred to the Court as LAC No. 126/1996. The compensation as per award of Reference Court was not paid hence petitioner and respondents filed execution proceeding bearing Special Darkhast No. 128/2015

and claimed recovery of Rs.77,74,478/-. The Acquiring Body has deposited the above amount before Learned Executing Court. Therefore, petitioner and respondents herein jointly filed an application and prayed for withdrawal of the deposited amount Exhibit 10. The petitioner and respondents filed application below Exhibit 11 and submitted that the respective cheques be issued in favor of name of petitioner and respondents. The Executing Court passed order below Exhibit 10 and allowed the same and closed execution proceedings on 18/01/2017. On 31//01/2017, petitioner and respondents filed pursis Exhibit 66 and requested for disbursal of amount in similar manner as stated in application below Exhibit 11. The respondent Nos. 2 and 3 filed their objections below Exhibit 67, 68 and 70 and disagreed with the disbursement of amount as suggested in application below Exhibit 11. Exhibit 73 came to be filed by the petitioner and prayed for disbursal of amount of Rs.17,19,536/- in favour of Kisan Tayade and amount of Rs.11,12,634/-, each in favor of petitioner and respondent Nos. 1 to 3. The respondent Nos. 2 and 3 not pressed application below Exhibit 67 and 70 objecting disbursement of amount as suggested in application below Exhibit 11. The learned Executing Court vide

order below Exhibit 73 dated 22/03/2017 allowed the application to withdraw the amount as mentioned in the application and as per request of the decree holders amount of Rs.16,03,928/- kept in fixed deposit in Nationalize Bank for the period of 6 months or till deciding the objections claimed of the said amount with interest. On 04/10/2017, the petitioner and respondent No. 1 preferred an application bearing MJC No. 79/2017, praying therein to disburse the remaining amount with interest i.e. Rs.16,03,928/-. The respondent No.3 filed objection and opposed the MJC. The non-applicant therein filed an objections vide Exhibit 9. The learned CJSD, rejected the MJC as it is not tenable.

5. The petitioner and respondent No.1 filed another application i.e. Misc. Civil Application No. 5/2023, by which, it is prayed that the Special Execution proceeding No. 128/2015, which was filed on 18/01/2017, be restored to its original number. The said Misc. Civil Application No. 5/2023, rejected on 22/01/2024. The said order is under challenge in the present matter.

6. It is the contention of the petitioner that Executing Court can apportion the shares while giving effect to an award.

Though Misc. Civil Application No. 5/2023 is filed praying for restoration of execution proceedings, it is in fact application for apportionment of the balance amount and for disbursement. It is pointed out that there was joint application and details of amount to be received by each of the applicant was mentioned in the said application Exhibit 11. Though amount was deposited and application was allowed, cheques were not issued. On 18/01/2017 proceedings were closed as decree is satisfied and it is recorded by learned Executing Court that there is six years delay in filing restoration application is incorrect. The application ought to have been filed within 30 days will not be applicable in the present matter.

7. The learned counsel relied on ***Hari Singh (Deceased) through L.Rs. Vs. Union of India and others, 2020 SCC OnLine Del 2585.***

8. As against this, it is the contention of the respondents that when there is dispute *interse* between the decree holders the Executing Court cannot decide the same and the remedy is to file separate suit. Even application for restoration is not maintainable as

it is not filed within a period of 30 days. The extension of limitation in view of Section 5 of the Limitation Act will not be applicable when proceeding arising out of Order 21 of the CPC. Section 5 of the Limitation Act is clear to that effect.

9. Learned counsel for respondent relied on following citations :

- 1. *Damodaran Pillai and others Vs. South Indian Bank Ltd., (2005) 7 SCC 300***
- 2. *Dattatraya S.o Raghunath Jog Vs. Radhabai W/o Laxmanrao Ghate, 2007(3) Mh.L.J. 425***
- 3. *Jagdish Dutt and another Vs. Dharam pal and others, (1999) 3 SCC 644***

10. Heard both the parties at length. Considered the rival submissions. It appears that amount of Rs.77,74,478/- came to be deposited by Acquiring Body before the Executing Court on 07/11/2016. There was joint application filed by petitioner and respondents herein giving details about the cheques to be issued in favor of parties with the details of amount. The learned Executing Court allowed the application and closed the execution proceedings. As cheques were not received, the another application

came to be filed below Exhibit 66 to disburse the amount. All the decree holders agreed on some amount which was disbursed and the Court directed to deposit the remaining balance amount of Rs.16,03,928/- in the Nationalize Bank till their objections get decided. The MJC preferred by petitioner and respondent No.1 for disbursal of that balance amount in favor of petitioner No.1, came to be rejected. The petitioner and respondent No.1 filed another Misc. Civil Application before Executing Court for restoration of proceedings of Special Darkhast No.128 of 2015. The same was rejected as it was filed after six years. It is also rejected on the ground that there is special provision under Land Acquisition Act Section 30 for referring the matter to the Court for apportionment. However, in my considered opinion these grounds are not proper to reject the Misc. Civil Application, except the ground that it is applied after 6 years for restoration. Section 30 of the Land Acquisition Act will come into play after passing of award by the LAO when there is dispute between the claimants for apportionment that Collector can refer to the Court to be decided.

11. Though learned counsel for petitioner relied on ***Hari***

Singh (supra), wherein, the Delhi High Court held that the powers of Executing Court under Order 21 of the CPC are extremely broad. It can adjudicate any issue that arises during execution of the decree and the order passed would in fact will treated as a decree. Adjudication of rival claims in respect of immovable property can always be done by the Executing Court and therefore, compensation that is in lieu of acquisition of immovable property need not be treated differently. What is held in paragraph 22 as under:

“22. The rationale behind conferring wide powers on executing courts is clearly to ensure that in case of passage of time and happening of any event including death of a particular person, parties' rights are adjudicated expeditiously and competing claimants are not relegated to civil courts for re-trial, which could delay the execution of decrees to a great extent. There is no reason as to why a different principle ought to be adopted in the case of an Executing Court which is disbursing compensation for land acquisition.”

12. However, it appears that the judgment of Hon'ble Apex Court in **Jagdish Dutt** (supra), held in paragraph No. 7 as under:

“7. When a decree is passed in favour of a joint family the same has to be treated as a decree in favour of all the members of the joint family in which b event it becomes a joint decree. Where a joint decree for actual possession of immovable property is passed and one of the coparceners assigns or transfers his interest in the

subject-matter of the decree in favour of the judgment-debtor, the decree gets extinguished to the extent of the interest so assigned and execution could lie only to the extent of remaining part of the decree. In case where the interest of the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the rights of the parties by an appropriate decree in a partition suit. It is no doubt true that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. However, in case where he is already in possession of the property, unless the rights are appropriately ascertained, he cannot be deprived of the possession thereof for a joint decree-holder can seek for execution of a decree in the whole and not in part of the property. A joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the shares of the decree-holders are defined or those shares can be predicted or the share is not in dispute. Otherwise the executing court cannot find out the shares of the decree-holders and dispute between joint decree-holders is foreign to the provisions of Section 47 CPC. Order XXI Rule 15 CPC enables a joint decree-holder to execute a decree in its entirety but if whole of the decree cannot be executed, this provision cannot be of any avail. In that event also, the decree-holder will have to work out his rights in an appropriate suit for partition and obtain necessary relief thereto. Various decisions cited by either side which we have referred to do not detract us from the principle stated by us as aforesaid. Therefore, a detailed reference to them is not required."

13. In view of the above principle of law, the Executing Court cannot find out shares of the decree holders and disputes

between joint decree holders. So far as issue of limitation is concerned Section 5 of the Limitation Act speaks about extension of prescribed period in certain cases. However, it excludes application under any of the provisions of Order 21 of the CPC. Therefore, there cannot be extension of limitation. In view of Order 21 Rule 106, any order passed dismissing the application is required to be moved within 30 days (Order 21 Rule 106 Subclause 3) and in that view of the matter the Section 5 of the Limitation Act is of no assistance to the party.

14. The learned counsel for respondents relied on the *Damodaran Pillai* (supra) *and Dattatraya Jog* (supra), in both the matters it is held by the Hon'ble Apex Court and by this Court that application under Section 5 of the Limitation Act is not maintainable in proceeding arising under Order 21 of the CPC. Order 21, Rule 105 and 106 speaks about restoration of execution application, it has to be filed within 30 days. If it is not filed within 30 days, there is no provision to condone the delay. Order 21, Rule 105 stipulates about dismissal of execution, on failure of applicant to appear when the matter is called on for hearing.

15. In the present matter though it is not the case that parties were absent on the day when the matter was fixed for hearing, on the contrary as per their joint application for issuance of cheque as detailed in the application the execution proceedings were closed/filed. Thus, the application for restoration is not maintainable as filed beyond 30 days. Thus, petition also fails on both the counts that Executing Court has no jurisdiction to decide *interse* disputes of joint decree holders specifically when decreetal amount is deposited and decree is satisfied. Accordingly petition is dismissed. No orders as to cost.

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

Jayashree..