



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

WRIT PETITION NO. 3001 OF 2025

Amol Subashrao Deshpande, Age 48 yrs., Occ. Business,
R/o Khamgaon, Taluka Khamgaon, District Buldana.

PETITIONER

VERSUS

Suresh Indal Chavan, Age 56 yrs., Occ. Service,
R/o Sutala Bk. Taluka Khamgaon, District Buldana.

RESPONDENT

Shri P.S. Tiwari, counsel for the petitioner.
Shri A.R. Wagh, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : NOVEMBER 15, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : NOVEMBER 28, 2025

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. An issue of vital importance arises in the instant petition as to whether a decree holder with a decree for possession is entitled to directly take possession of the suit property without filing execution proceedings only on the pretext of absence of stay to the decree.

3. This interesting question arises in the backdrop of challenge to the order dated 21.05.2025 passed on an application at Exhibit 9 by the Court of District Judge-1 Khamgaon, District Buldana in Regular Civil Appeal No.5 of 2025 allowing the application filed by the original defendant to restore his possession to the extent of 25.50 square meters area of the suit property.

4. The background facts are succinctly put below:-

(I) The petitioner is the original plaintiff who had filed suit for declaration, removal of encroachment, possession and injunction with respect to plot no.18 admeasuring 170 square meters situated at Khamgaon, District Buldana. The plaintiff claimed the defendant i.e. respondent herein had illegally encroached upon 25.50 square meters of land which is owned by the plaintiff. The suit was contested on merits by both the parties.

(ii) By judgment and decree dated 23.12.2024, the suit was decreed directing the defendant to remove encroachment and deliver vacant possession of the suit property alongwith a restraint on defendant from disturbing the peaceful possession of the plaintiff over the suit property.

(iii) In this backdrop of the existence of a decree directing the defendant to handover peaceful possession of the suit property the plaintiff sprung into action and after taking police aid took the possession of the suit property on its own on 03.05.2025 and has maintained the possession with him.

(iv) Relevant to note, the judgment and decree was subjected to challenge vide Regular Civil Appeal No.5 of 2025.

(v) Although, notice of the appeal was not served upon the plaintiff on 03.05.2025 when the decree holder took back the possession, however after four days i.e. on 07.05.2025, the defendant/appellant in the appeal, filed the application at Exhibit 9 in the pending appeal and sought for recovery of possession by invoking provisions of Section 151 of the Code of Civil Procedure, 1908 and sought restoration of the possession.

(vi) The original plaintiff (respondent in the appeal) appeared and objected to the maintainability of the application for restoration of possession, however after hearing the parties, the appellate Court passed order dated 21.05.2025 by which the application for restoration of the possession was allowed.

Feeling aggrieved by this order, the original plaintiff had invoked jurisdiction of this Court under Article 227 of the Constitution of India. Pertinently, in the controversy that has arisen, the plaintiff has claimed that in absence of any stay to the decree or service of any notice upon him of any civil appeal challenging the decree, the petitioner-original plaintiff was entitled to get back the possession since he was armed with a decree of possession.

5. Shri P.S. Tiwari, learned counsel for the petitioner-original plaintiff vehemently submitted that the plaintiff was entitled to take back possession of the suit property as the decree was in force and there was no hurdle existing on the said date. He submitted that after the suit was decreed, the defendant was infact bound to handover the possession on his own and since there was no stay to the execution of the decree, the plaintiff was entitled to take back the possession. He also submitted that it was not a clandestine act on the part of the plaintiff and thus there is no question of restoring the possession back to the defendant only because the regular civil appeal is pending. It was also his submission that the defendant should file a separate suit for possession under Section 6 of the Specific Relief Act, 1963, for getting back the possession. He therefore submitted that the impugned order directing the plaintiff to restore the possession is unsustainable in law and deserves to be quashed and set aside.

6. In support of his submissions, the learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court in ***Shub Karan***

Bubna Alias Shub Karan Prasad Bubna Versus Sita Saran Bubna & Others

[(2009) 9 SCC 689] and ***Padam Sen & Another Versus The State of U.P***

[AIR 1961 SC 218] and submitted that a litigant is entitled to the fruits of a decree and is therefore entitled to reap its benefits at the first instance.

He submitted that in view of the position of law laid down in these judgments after securing a decree, the decree holder need not be kept waiting indefinitely for the judgment debtor to comply the decree on his own. He therefore submitted that since the respondent was not complying with the decree, there is no illegality on the part of the petitioner to get back the possession with the assistance of police. By relying upon the judgment in ***Rame Gowda (Dead) by LRs Versus M.Varadappa Naidu (Dead) by LRs & Another*** [(2004) 1 SCC 769], he submitted that the person in peaceful possession is entitled to retain his possession and in order to protect such possession, he may even use reasonable force to keep out a trespasser. He thus submitted that a rightful owner who has been wrongfully dispossessed of land is entitled to take back his possession and in view of this legal position, he justified the action of the petitioner taking back possession from the respondent.

7. Per contra, Shri A.R. Wagh, learned counsel for the respondent strenuously opposed the petition. He submitted that the conduct of the petitioner-original plaintiff is grossly arbitrary, illegal and without any sanctity of law. He submitted that the plaintiff was bound to exhaust the mechanism provided by law and without filing any execution proceedings, the plaintiff is not entitled to unilaterally take back the possession of the

suit premises. By relying upon the provisions of Order XXI Rule 10 of the Code, he submitted that it is mandatory for the plaintiff to file an execution case to get the decree executed and the action of the plaintiff to use coercive method to take back possession on the pretext of executing the decree unilaterally is an out and out illegality. He therefore submitted that the defendant is entitled for restoration of his possession during pendency of the appeal and thus supported the impugned order passed by the appellate Court directing restoration of possession.

8. To buttress his submissions, learned counsel for respondent placed reliance on the judgments of the Hon'ble Supreme Court in *K.K. Velusamy Versus N.Palanisamy* [(2011) 11 SCC 275] and *Om Parkash & Another Versus Amar Singh & Another* [(2019) 10 SCC 136] and submitted that a Court is empowered under the inherent powers under Section 151 of the Code to pass orders to restore possession when somebody is illegally dispossessed. He therefore submitted that a decree holder is entitled to get the decree executed only in accordance with the mechanism provided under the Code. He submitted that in the wake of specific provisions about filing of execution proceedings as provided in the Code, the decree holder was not entitled to take law in his own hands and get the fruits of the decree on his own.

9. In the backdrop of aforesaid rival contentions, the controversy thus falls for my consideration.

10. Undisputedly, the judgment and decree dated 23.12.2024 was passed in favour of the plaintiff. There was no stay to this decree as on 03.05.2025 on which date the petitioner obtained the possession of the suit property although in presence of police authorities. True it is, that the petitioner was not served with any notice of the regular civil appeal and had no knowledge about the pendency of the appeal, the crucial issue is whether the petitioner who was the decree holder is entitled to straightway take back the possession of the suit property without filing any execution case.

11. In order to delve further into the controversy, it is necessary to consider the provisions of Order XXI Rule 10 of the Code which is reproduced below:-

“10. Application for execution.— Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof”

A perusal of this provision clearly shows that there is a mandate for the decree holder to apply to the Court which has passed the decree to get it executed. A perusal of the provisions of Order XXI of the Code clearly shows that a mechanism is provided for execution of the decrees. Thus, in case a judgment debtor does not on its own comply with the decree, it is not expected of the decree holder to straightway take law in his own hands and get the decree executed without filing any execution proceedings. A coercive method to execute a decree can, in a given case, be adopted in case the judgment debtors do not comply with the directions of the

executing Court. However, a decree holder does not have powers and authority to unilaterally act to get the decree enforced as has happened in the instant case. If such a course is allowed then the action of the decree holder would be not only arbitrary but would amount to gross illegality. By way of an illustration, a decree holder armed with a money decree in his favour if straightway resorts to taking possession of the movable and immovable properties of the judgment debtor without filing any execution case, it would be a travesty of justice. Such course of action ignoring the mechanism of execution of decrees is not at all contemplated.

12. It is profitable to make a reference to a judgment of Co-ordinate Bench of this Court in *Maximo Antonio Viegas (since deceased) through his heirs Nelson Monteiro Viegas & Others Versus Michael Viegas (Dr.) & Another* [2014(6) Mah LJ 184]. In this case, although the controversy was not about any order of restoration of possession, but, while dealing with an order passed by executing Court directing the decree holder to first take steps to execute the decree on its own and then approach the Court, this Court has disapproved the approach of the executing Court in terse words and observed that such an order would create a possibility of law breaking by decree holders. In the instant case the conduct of the decree holder, if approved, would grant a premium to illegalities.

13. In the instant case, the petitioner-decree holder has not at all filed any execution proceedings. Even though he was not served with any notice of appeal, it was not expected of him to straightway take possession of the suit property. Although the counsel for the respondent has submitted that

notice of the regular civil appeal was issued on 06.02.2025, the fact remains that the notice was not actually served upon the petitioner. Even in that case, in the wake of provisions of Order XXI Rule 10 of the Code, the decree holder was required to file execution case to get the decree executed through mechanism of law. The petitioner was entitled to get the decree executed even by use of force or police aid in absence of any stay to the appeal, albeit only on the basis of the orders of the executing Court. The conduct on the part of the petitioner in getting back the possession without filing any execution case does not stand to the scrutiny of law.

14. The position of law laid down in the judgments relied upon by the counsel for the petitioner is not disputed. However, none of the judgments deal with the situation entitling the decree holder to get back the possession without filing any execution proceedings. The contentions of the counsel for the petitioner that the respondent should file a separate suit for possession under Section 6 of the Specific Relief Act, 1963 instead of seeking restoration of possession is not at all an acceptable argument. The petitioner has failed to demonstrate any perversity in the impugned order.

15. A perusal of the impugned order directing the petitioner to restore the possession of the suit property shows that it is in tune with the provisions of law providing for a mechanism to execute the decree. The direction issued by the Appellate Court to the petitioner to restore the possession of the land to the respondent does not need any interference as the Appellate Court is empowered to pass such orders under Section 151 of the Code.

16. In view of above mentioned factual and legal aspects, no indulgence under Article 227 of the Constitution of India is warranted with the impugned order. Hence, the writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE