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

WRIT PETITION NO. 3764 OF 2025

1. Dhananjay Wasudeo Dixit, Age 49 years,
Occ:Business, R/o 17-A Topovan Complex,
Jaiprakash Nagar, Nagpur.

2. Vaibhav Wasudeo Dixit, Age 45 years,
R/o 17-A, Topovan Complex, Jaiprakash Nagar,
Nagpur. Through POA Holder Dhananjay W.Dixit. PETITIONERS

VERSUS

Kumar Wamanrao Dumbhare, Age 61 years,
Occ: Business, R/o Plot No.20, Sahakar Nagar,
Khamla, Nagpur. RESPONDENTS

---

Shri Abhijeet Khare, Counsel for the petitioners.
Shri M.R. Joharapurkar, counsel for the respondent.

---

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : SEPTEMBER 15, 2025

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. By this writ petition, the petitioners have challenged the order passed by the Executing Court directing the petitioner no.1-Decree holder to pay Rs10,00,507/- to the judgment debtor.

3. The petitioner no.1 is the decree holder who is seeking execution of the decree and the respondent is the judgment debtor in the execution proceedings. The controversy involved in the instant writ petition is as to whether the petitioner-Decree holder is liable to pay to the respondent-Judgment debtor an amount of Rs.10,00,507/- in accordance with the final orders passed by the Hon'ble Supreme Court regarding settlement between the parties.

4. The background facts are stated thus:-

The petitioner no.1 had filed a suit for specific performance of contract which was partly decreed by the trial Court thereby directing refund of Rs.7,00,000/- alongwith interest. The litigation was contested by the parties and it reached upto this Court which was decided by the judgment dated 05.09.2022 in Second Appeal No.102 of 2022 by which the suit filed by the petitioner no.1 seeking specific performance of agreement to sell was decreed. The judgment in the second appeal was subjected to challenge before the Hon'le Supreme Court. During the course of hearing before the Supreme Court, the parties expressed desire to settle the matter. Pertinently, the judgment debtor, the petitioner before the Supreme Court, expressed readiness to return the amount of Rs.7,00,000/- alongwith interest at the rate of 9% per annum thereby expecting that the controversy would be compromised by decree holder by not pressing for execution of the impugned judgment (judgment in the second appeal). This proposal given by the petitioner in the Special Leave Petition was recorded by the Hon'ble Supreme Court in its order dated 01.03.2024. Accordingly, the petitioner before the Supreme Court (judgment debtor) deposited an amount of Rs.17,11,150/-, which was for being refunded to the decree holder. However, the settlement in these terms was not finalized and the amount remained deposited.

5. On subsequent date of hearing, after considering the readiness of the parties to settle the matter, the Hon'ble Supreme Court recorded the settlement in its final order dated 01.04.2024 observing therein that the

decree holder is ready and willing to pay a total consideration of Rs.43,00,000/- to the judgment debtor as full and final consideration under the agreement to sell. Pertinently, it is also observed that the judgment debtor is also entitled to refund of Rs.17,11,150/- deposited by him, as mentioned above. In the same order, it is specifically observed that "totally the petitioner herein must be paid Rs.43,00,000/- and nothing more". Thus, it is clear that while recording settlement, the Hon'ble Supreme Court observed that the judgment debtor must be paid Rs.43,00,000/- in total.

6. In the wake of this final order, considering the amounts already paid by the decree holder to the judgment debtor, the judgment debtor filed an application in the execution proceedings seeking direction to the decree holder to deposit an amount of Rs.10,00,507/- before executing the sale-deed. The decree holder resisted this application and the Executing Court passed the order dated 16.06.2025 by which the application came to be allowed directing the petitioner no.1-decree holder to deposit balance amount of Rs.10,00,507/- before the Executing Court. This order is challenged by the petitioners by way of the instant writ petition.

7. The controversy which arises for consideration is as to whether the petitioner no.1-decree holder is liable to pay an amount of Rs.10,00,507/- particularly in view of refund of Rs.17,11,150/- as directed by the Hon'ble Supreme Court.

8. The learned counsel for the petitioners submits that payment of Rs.10,00,507/- would be over and above the amount of Rs.43,00,000/- since the amount which is refunded to the judgment debtor i.e. Rs.17,11,150/- included the interest on the amount of Rs.7,00,000/- which was required to be calculated as part of the consideration amount. The learned counsel for the petitioners therefore submits that in view of the payments made earlier, there is no balance outstanding amount and the respondent-judgment debtor is liable to execute the sale-deed immediately.

9. Per contra, learned counsel for the respondent strenuously submitted that the petition is misconceived since in view of the settlement recorded by the Hon'ble Supreme Court, the petitioners are bound to pay an amount of Rs.43,00,000/- to the respondent. He submitted that the petitioners had earlier paid-deposited Rs.7,00,000/-+Rs.16,19,493/-+Rs.9,80,000/-, totalling Rs.32,99,493/-, which is short by Rs.10,00,507/- for making it Rs.43,00,000/-. He submitted that though the amount of Rs.17,11,150/- was deposited by the respondent in view of a possible settlement, since it was not concluded the Hon'ble Supreme Court permitted him to withdraw the same. As such, he submitted that in view of the payments made earlier, as referred above, there is no perversity with the impugned order.

10. Having regard to the settlement recorded by the Hon'ble Supreme Court in its final order dated 01.04.2024, it has to be seen as to whether the decree holder has paid total amount of Rs.43,00,000/- to the judgment debtor. A perusal of the payments made earlier by the decree holder to the judgment debtor shows that an amount of Rs.32,99,493/- is paid-

deposited till date. These payments are undisputed. The decree holder had initially paid Rs.7,00,000/-, then deposited an amount of Rs.16,19,493/- and later on transferred an amount of Rs.9,80,000/- by RTGS to the judgment debtor. It has to be noted that amount of Rs.17,11,150/- was deposited by the judgment debtor expecting a possible settlement, however, after final order recording settlement, the same was refunded to him.

11. Thus, on a perusal of these payments, it becomes clear that the decree holder is required to pay an additional amount to make the total consideration amount of Rs.43,00,000/-. As such, the contentions of decree holder that the amount of Rs.17,11,150/- included the amount of interest and hence should be counted for arriving the total consideration amount is misconceived. The only issue requires consideration is whether the decree holder has paid total consideration of Rs.43,00,000/- to the judgment debtor. After considering all the payments made earlier, it is clear that the decree holder is liable to pay an amount of Rs.10,00,507/- as prayed by the judgment debtor *vide* his application before the Executing Court.

12. A perusal of the impugned order shows that the Executing Court has given due consideration to the payments made by the decree holder and has rightly passed the order directing the decree holder to pay an amount of Rs.10,00,507/- to the judgment debtor. I do not find any perversity with the reasoning recorded by the Executing Court.

13. Considering the fact that the decree holder has not paid the balance amount of Rs.10,00,507 and resultantly has not paid the total consideration of Rs.43,00,000/-, as per the order dated 01.04.2024 of the Hon'ble Supreme Court recording settlement, it is clear that the decree holder attempted to misdirect the controversy to avoid payment. Having regard to the overall circumstances mentioned above, I am of the firm view that no indulgence is required with the impugned order.

14. In view of aforesaid discussion, the writ petition deserves to be dismissed and the same stands dismissed with costs upon the petitioners. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE

Signed by: Apte
Designation: PS To Honourable Judge
Date: 26/09/2025 10:19:35