



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

15 WRIT PETITION NO.13084 OF 2025

Prakash Vitthal Kale Died Thr Lrs Ashalata Prakash Kale And
Others

VERSUS

Maharashtra Pulse Mills, Jalgaon Through Its Partner And
Others

...

Advocate for Petitioners : Mr. G. S. Rane

Advocate for Respondent 1 : Mr. V .B. Patil

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : January 12, 2026

PER COURT :-

1. Present writ petition takes exception to the order dated 04.09.2025 passed below Exhibit-1, Exhibit-255 and Exhibit-258 in Regular Darkhast No.152 of 2012, by Civil Judge J.D., Jalgaon.

2. Brief facts, giving rise to the present writ petition, are as under :-

On 17.1.1972, there was agreement to sale between the parties. Special Civil Suit No.4 of 1975 was filed seeking specific performance of agreement filed by respondent no.1. Suit was decreed on 30.7.1977. During course of execution of decree, there were rounds of litigation between parties.

Finally, on 18.2.2025 order was passed below Exhibit-243 and 248 directing appointment of Court commissioner to take steps for converting suit land from agriculture to Non-agriculture and also to execute sale-deed in terms of Decree. On 28.8.2025 Court Commissioner submitted his report of compliance to Executing Court and reported that sale-deed bearing no.5221 of 2025 dated 25.8.2025 has been executed by him and possession of suit property is handed over to decree holder.

3. At this stage, petitioners filed an application below Exhibit-258 raising objection as to non- adherence to the mandate under Order-21 Rule 34 of Civil Procedure Code and sought permission to raise objections to the draft-sale deed. Executing Court rejected petitioners application vide impugned order dated 4.9.2025 observing that sale-deed has been already executed in pursuance to directions given to Court Commissioner and objection to draft sale-deed cannot be considered. Accordingly, Executing Court accepted report of Court Commissioner and disposed of Execution Proceeding.

4. Mr. Rane, learned advocate appearing for petitioners would submit that Order 21 Rule 34 prescribes procedure for execution of a decree. According to him, it was mandatory

upon Executing to furnish a copy of draft of sale-deed upon judgment debtor together with notice requiring his objections to be made and upon receipt of such objections, pass further orders either accepting the draft or altering the draft.

5. In present case, aforesaid mandate is not complied with. Executing Court has not given due importance to aforesaid aspect of matter while passing the impugned order. He would, therefore, urge that impugned order may be quashed and set aside and directions be given to Executing Court to grant opportunity to petitioners to raise objection to draft sale- deed and pass further orders in light of mandate under Rule 34 of Order 21. In support of his contentions, Mr. Rane, relies upon observations of the Supreme Court in case of **Rajbir Vs. Suraj Bhan and another reported in (2022) 14 Supreme Court Cases 609.**

6. Per contra, Mr. Patil, learned advocate appearing for respondent/decreed holder would submit that by order dated 18.2.2025 passed below Exhibit-243 and 248, Executing Court had issued mandate to Court Commissioner to take necessary steps to finalize execution of decree by executing sale-deed and delivery of possession to decree holder. Said order is confirmed

by this Court in Writ Petition no.7127 of 2025. The SLP no.23301 of 2025 filed against said order is unconditionally withdrawn. The Court Commissioner submitted his report of compliance on 28.8.2025 to Executing Court, whereas, application under Order 21 Rule 34 was filed on 2.9.2025. As such, prayers in application as well as in writ petition does not survive. Executing Court has taken into consideration all relevant aspects and disposed Execution Proceeding and rejected petitioners application below Exhibit-258, which is just and proper.

7. Having considered submissions advanced by learned advocates appearing for respective parties, it is apposite to refer Order 21 Rule 34, particularly, clause nos.1 to 4, which reads thus :-

34. Decree for execution of document, or endorsement of negotiable instrument.

- (1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.
- (2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

- (3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.
- (4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

8. The Supreme Court of India interpreted aforesaid clauses in many of its judgments. In case of *Rajbir* (supra), it is observed that, “if sale-deed is executed/registered without inviting objections from Judgment Debtor, it would violate/contravenes the salutary provisions of Order 21 Rule 34. In the sense, it is observed that Order 21 Rule 34 cannot be diluted and any such departure from the provisions can have highly deleterious consequences not merely qua the parties in question but also persons who come to deal with those parties in future. It can lead to further litigation. It is all of this which is sought to be avoided by bringing clarity and precision and execution must be in conformity with the adjudication contained in the decree.”

9. With these observations, Hon'ble Supreme Court while setting aside the sale-deed which was executed without due adherence to Order 21 Rule 34 of the Civil Procedure Code proceeded to pass further orders, thereby directing Executing Court to hand over copy of draft sale-deed produced by the Decree Holder to the Judgment Debtor and granted opportunity to raise objections to draft sale-deed within a period of three weeks and directed Executing Court to consider such objections. It is clarified that, if Executing Court finds that sale-deed (which was already executed) is fallacious or foul of the decree or sale-deed is not found in conformity with the decree, fresh proceeding will be taken, however, if sale-deed is found in conformity with the decree, there will be no necessity to set aside the sale-deed or take up fresh proceeding.

10. In present case, it is discernible that decree holder had not tendered copy of draft sale-deed before Executing Court and Court Commissioner proceeded to execute the registered sale-deed without due adherence to the mandate under Order-34 of Rule 21. As pointed out by Mr. Patil, application appears to have been tendered after execution of the sale-deed, however, record indicates that petitioners had no opportunity

to raise objections as Commissioner submitted his report only after execution of the sale-deed. In this background, this Court finds that in present case also directions as issued by the Supreme Court in case of Rajbir (supra) are required to be issued. Hence, following order is passed.

ORDER

- i. Writ Petition is partly **allowed**.
- ii. The impugned order dated 4.9.2025 passed by Civil Judge Jr. Division, Jalgaon below Exhibit-1, Exhibit-255 and 258 in Regular Darkhast No.152 of 2012 is quashed and set aside.
- iii. The Executing Court shall furnish a copy of draft sale-deed to the petitioners alongwith notice inviting objections to the contents of draft.
- iv. After granting opportunity of hearing to the concerned parties, Executing Court shall proceed to pass further orders either accepting such objections or rejecting the same. In case, Court finds that sale-deed, which is already executed or contents of sale-deed are fallacious or not in conformity with the decree, the Executing Court shall follow further procedure for taking corrective steps.

In case, Executing Court finds that objections to draft sale-deed are not acceptable, no further orders would be required.

- v. The aforesaid process shall be completed within a period of Eight (8) weeks from today.
- vi. Parties to appear before the Executing Court on Monday **29.1.2026**.
- vii. Writ Petition stands **disposed of** accordingly.

(S. G. CHAPALGAONKAR, J.)

...

AAA/-