



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 762 OF 2026**

MOHD. HANIF MOHD. ISMAIL AND ANOTHER
VERSUS
SHIAKH NAIM SHAIKH LAL

...
Mr. Akram Inamdar h/f Ms. Fatema S. Kazi, Advocate for the
Petitioners.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 21st JANUARY, 2026.

P.C.:-

1. The present Writ Petition takes exception to order dated 03.01.2026 passed below Exhibit-53 by 2nd Joint Civil Judge Senior Division, Hingoli in Regular Darkhast No.5/2022, by which Executing Court issued possession warrant against petitioner/judgment debtor in terms of Order 21 Rule 35 of Code of Civil Procedure, so also directed for providing police assistance to Bailiff for execution of possession warrant.

2. The petitioner was defendant no.7 in Waqf Suit No.177/2018 filed before Maharashtra State Waqf Tribunal at Aurangabad. The suit was instituted on behalf of Secretary of Waqf Institution namely "Masjid Paltan and Madarsa Anjuman-e-Islamia" situated at Hingoli. The suit has been decreed and petitioner/defendant no.7 is directed to hand over vacant possession of property CTS No.4404 (Municipal House No.8-158-8 admeasuring 20 x 40 sq. ft.) as specified in operative part of judgment and decree. The petitioner assailed aforesaid order by filing Civil Revision

Application No.35/2022 before this Court. However, Civil Revision Application came to be disposed of with direction that applicant will file application for lease of property within period of one month before Managing Committee/Board of Masjid Paltan and Madarsa Anjuman-e-Islamia, Hingoli and in case such an application is filed, that can be decided as per Rule 4 of Waqf Properties Lease Rules, 2014. The petitioner was also directed to file an undertaking before this Court that he will file application for lease and do not want to press Civil Revision Application.

3. In view of aforesaid order passed by this Court in Civil Revision Application, decree passed by Waqf Court has attained finality with liberty in favour of petitioner to file application seeking lease of property.

4. The respondent/original plaintiff in Waqf Suit filed Regular Darkhast No.5/2022 for execution of decree passed in Waqf Suit. The present petitioner filed objection to execution of decree on the ground that his application for grant of lease has not been decided. The said objection is considered and rejected by Executing Court vide order dated 18.09.2025. It has been observed that petitioner/Judgment Debtor was given liberty to file application for lease within period of one month. However, such an application was not filed within prescribed time in terms of order passed by this Court. In this backdrop, respondent/decreed holder filed

application below Exhibit-53 in execution for grant of police assistance for execution of decree. The Executing Court allowed said application and directed issuance of possession warrant under Order 21 Rule 35 of Code of Civil Procedure, so also granted police protection. In this background, present writ petition has been filed.

5. The learned Advocate appearing for petitioners submits that his application for grant of lease has not been decided and still possession warrant has been issued, which is contrary to order passed by this Court in Civil Revision Application No.35/2022.

6. The aforesaid submission is fallacious, looking to order dated 18.09.2025 passed by Executing Court while dealing with objection filed by petitioner below Exhibit-58. The Executing Court has elaborately dealt with aforesaid contention and rejected same observing that petitioner could not make necessary application within time limit fixed seeking grant of lease and, therefore, he cannot resist execution of decree. Once order of Executing Court has attained finality, petitioner cannot raise same contention in this petition while challenging order issuing possession warrant.

7. In that view of matter, there is no merit in writ petition. Hence, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE