



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

932 CONT. PETITION NO. 88 OF 2026
IN WP/5182/2023

SHAM BALKRISHNA SELUKAR DIED THROUGH ITS LRS
VERSUS
BABU TUKARAM RATHOD

.....
Advocate for the Petitioner : Mr. Shrikant Kulkarni
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 27.02.2026

PC.:-

1. Heard advocate Mr. Kulkarni the learned counsel appearing for the petitioners at length. By the present petition, the petitioners have put forth prayer clause B and C as under:

“B) The respondents may kindly be punished for willfully and intentionally disobeying the order dated 18/06/2025 passed in Writ Petition No. 5182 of 2023 under the provisions of the Contempt of Courts Act, 1971;

C) The respondents may kindly be punished for willfully and intentionally disobeying the order dated 18/06/2025 passed in Writ Petition No. 5182 of 2023 under article 215 of constitution of India;”

2. I have carefully gone through the order dated 18.06.2025 passed by this Court in Writ Petition No.5182/2023, wherein it has been observed

that during the pendency of inquiry as to the breach of injunction, presence of petitioner was secured after herculean efforts, therefore, while releasing him, the Trial Court followed the procedure under Order XXI Rule 40 of Code of Civil Procedure. So also, considering the past conduct, the petitioner was directed to furnish solvent surety of Rs.One Lakh for his presence. This Court specifically observed in para nos.7 to 9 as under:

“7. Considering submissions advanced, it can be observed that decree for perpetual injunction is passed in Regular Civil Suit No.908/1987 on 11.03.1994 in respect of suit field Block Nos.488, 490, 491 and 595 of village Radi. The petitioners herein are legal heirs of original defendants. The Regular Darkhast No.15/2005 is filed alleging breach of injunction. The petitioner initially avoided service of notice. Later on, filed appearance and furnished undertaking to attend execution proceeding, however, again flouted such undertaking and remained absent, which lead to issuance of arrest warrant, which was ultimately executed and petitioner was brought before Executing Court. Therefore, in pursuance to provision contained under Order XXI Rule 40(2), Executing Court find it necessary to impose stringent condition for securing attendance of petitioner in execution, eventually, directed him to furnish solvent surety for Rs.1,00,000/-.

8. Considering reasons as recorded by Trial Court and conduct of petitioner, no fault can be found in directions issued by Executing Court.

9. Further as rightly pointed out by Mr. Kulkarni, statements made in Writ Petition are contrary to factual aspects and certainly employed with intention to mislead this Court. In this background,

Writ Petition stands dismissed with cost of Rs.10,000/- (Rs.Ten Thousand only) to be deposited with Executing Court within period of four weeks from today. On deposit of cost, amount be released in favour of respondent nos.1(a) to 1(e).”

3. The contention of the present petitioners is that the respondent/contemnors have intentionally and willfully disobeyed the order passed by this Court on 18.06.2025 in Writ Petition No.5182/2023 by not depositing the amount of cost. However, it is submitted that merely not depositing the amount of cost within stipulated period or failure to deposit the amount of cost of Rs.10,000/- within stipulated period will not attract Section 2(b) of the Contempt of Courts Act. Since, the present petitioners are having remedy to recover the said amount in the execution proceeding bearing Regular Darkhast Nos.21/2012 and 15/2005 which have been already initiated, hence, I do not find it appropriate to exercise powers under the Contempt of Courts Act. Therefore, the present petition is dismissed.

[Y.G. KHOBRADE, J.]