

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1973 OF 2026

DADA ANTU NAVALE AND ANOTHER
VERSUS
UTTAM SITARAM NAVALE

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Advocate for Petitioners/Defendants (JD): Mr. Kirankumar Phakade
Advocate for Respondent/Plaintiff (DH): Mr. C. P. Kulkarni

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 04-05-2026

PER COURT:-

1. The petitioners raise challenge to the order dated 04.04.2026, issued by the learned Civil Judge Junior Division, Dahiwadi, rendered below Exhibit-41 in Regular Darkhast No. 4 of 2015, granting 30-day time to remove the existing construction, failing which it directed forcible execution via bailiff. Furthermore, the order authorized demolition with police assistance and mandated the handover of possession to the decree holder.

2. The original suit for partition and separate possession, Regular Civil Suit No. 144 of 2005, was initially dismissed on 20.10.2010. However, the respondent successfully appealed this decision in Regular Civil Appeal No. 586 of 2010. On 09.09.2014, the learned District Judge-1, Vaduj, decreed the suit, declaring

that the respondent holds a 1/2 share in the property and directing that partition be carried out in accordance with Section 54 of the Code of Civil Procedure. The petitioners further submit that their challenge to this decree in Second Appeal No. 186 of 2015 was dismissed by this Court on 11.11.2024. Following this, the respondent initiated Regular Darkhast No. 4 of 2015 to execute the appellate decree.

3. In execution proceedings, the respondent filed Exhibit-41 seeking the removal of construction and immediate possession, which the petitioners resisted on the grounds that the property supports their livelihood through a hotel business and that they required reasonable time for compliance. However, the executing Court rejected the same by the order under challenge. Hence, the Petitioners are before this Court.

4. The learned counsel for the petitioners submits that the Executing Court exceeded its jurisdiction by directing coercive demolition and forcible dispossession, reliefs not explicitly provided in the partition decree. Since the decree mandates partition under Section 54 of the CPC through the Collector, the court bypassed this statutory mechanism to adopt an illegal and disproportionate mode of execution that effectively modifies and enlarges the original decree. The petitioners contend that

immediate demolition would result in irreparable loss and the deprivation of their livelihood derived from the hotel business currently operating on the suit property, a hardship the trial court failed to judicially consider while mechanically recording the decree's finality. Hence, prayed to allow the petition.

5. Having heard the submissions and upon perusal of the record, it is evident that the petitioners, are the judgment debtors, seeking to stall the execution of a decree that has already attained finality. The record indicates that the appellate decree dated 09.09.2014 was upheld by this Court in Second Appeal, leaving no further room for the petitioners to re-agitate the merits of the partition.

6. Consequently, the respondent, as the decree-holder, is entitled to seek vacant possession of the premises as described as per the decree. The grievance that the Executing Court has travelled beyond the scope of the decree by directing the removal of construction does not warrant consideration. Since the appellate court's judgment mandates the handing over of vacant possession, the directions issued by the Executing Court on 04.04.2026 are consequential and essential steps to ensure the effective implementation of the decree.

7. The petitioners cannot use their continued occupation or the existence of a business as a shield to indefinitely frustrate a legally binding and final judgment. The findings of the Executing Court are well-reasoned and consistent aimed to confer the finality to the litigation. There is no jurisdictional error or perversity in the order that would require interference by this Court under Article 227 of the Constitution of India.

8. In view of the above, the writ petition sans merit and, accordingly, the same stands dismissed.

[SACHIN S. DESHMUKH]
JUDGE

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