IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5672 OF 2019

Smt. Amina Manzoor Ahmed Ansari, through COA. Ashique Ahmed Manzoor Ahmed Ansari ***...Petitioner***

: Versus :

Smt. Sarwari Shabbir Ahmed Ansari & Ors. ***...Respondents***

Mr. Jamshed Ansari, *for the Petitioner.*

Mr. Satish Kumbhar, *for Respondent Nos.1 and 2.*

CORAM: SANDEEP V. MARNE, J.

DATED: 7 OCTOBER 2026.

P.C.:

1) The petition challenges order dated 17 January 2019 passed by the Civil Judge Junior Division, Bhiwandi on application at Exhibit-73. The Executing Court has allowed the application at Exhibit-73 by which the Obstructionist/Respondent had sought permission to file the interrogatories under the provisions of Order XI Rules 1 and 12 and Sections 30 and 32 of the Civil Procedure Code, 1908 (Code).

2) I have heard Mr. Ansari, the learned counsel appearing for the Petitioner and Mr. Kumbhar, the learned counsel appearing for Respondent Nos.1 and 2.

3) The Respondent-Obstructionist has presented its obstruction to execution of the decree. In an enquiry to be conducted under Order 21 Rules 97 and 101 of the Code, the Obstructionist will have to establish his independent right to occupy the property against which the decree is sought to be executed. The burden is on the Obstructionist to prove existence of his independent right to occupy the property. In the present case, the Obstructionist has led evidence. The decreeholder has chosen not to lead evidence. This does not mean that Obstructionist will have a right to file interrogatories and extract information from the decreeholder. The Obstructionist has to stand or fall on its own legs and cannot depend upon information that may be available with the decreeholder. Though an application under Order 21 Rule 97 of the Code needs to be decided as if it is a Suit, this does not mean that the Obstructionist proceedings can be taken to ludicrous level of full fledged trial of the suit. In the present case, Obstructionist has led evidence and the Executing Court will decide whether there exists an independent right in favour of the Obstructionist to oppose execution of the decree on property in his occupation.

4) In view of the above discussion, the impugned order is unsustainable. The Petition accordingly succeeds. Order dated 17 January 2019 is set aside. The execution proceedings shall however be decided by the Executing Court uninfluenced by any observations made in the order.

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT
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