



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15991 OF 2025**

Suresh Pundalik Parulekar	...	Petitioner
versus		
Shree Sahyadri Co-op. Housing Soc. Ltd.	...	Respondent
WITH		
INTERIM APPLICATION NO.1289 OF 2026		
IN		
WRIT PETITION NO.15991 OF 2025		
Suresh Pundalik Parulekar	...	Applicant/Petitioner
versus		
Shree Sahyadri Co-op. Housing Soc. Ltd.	...	Respondent
WITH		
WRIT PETITION NO.2163 OF 2026		
Jagannath Parsuram More	...	Petitioner
versus		
Shree Sahyadri Co-op. Housing Soc. Ltd.	...	Respondent
WITH		
INTERIM APPLICATION NO.1291 OF 2026		
IN		
WRIT PETITION NO.2163 OF 2026		
Jagannath Parsuram More	...	Applicant/Petitioner
versus		
Shree Sahyadri Co-op. Housing Soc. Ltd.	...	Respondent
WITH		
WRIT PETITION NO.2161 OF 2026		
Mandakini Pundalik Patil (deceased) through her legal heirs Sudhakar Pundalik Patil (deceased) through his legal heirs Shubhangi Sudhakar Patil and Ors.	...	Petitioners
versus		
Shree Sahyadri Co-op. Housing Soc. Ltd.	...	Respondent
WITH		
INTERIM APPLICATION NO.1292 OF 2026		
IN		
WRIT PETITION NO.2161 OF 2026		

Mandakini Pundalik Patil (deceased) through
her legal heirs Sudhakar Pundalik Patil (deceased)
through his legal heirs Shubhangi Sudhakar Patil
and Ors. ... Applicants/Petitioners

versus

Shree Sahyadri Co-op. Housing Soc. Ltd. ... Respondent

WITH

WRIT PETITION NO.2159 OF 2026

Ganpat Fatu Naik (deceased) through legal
heirs Savitri Ganpat Naik and Ors. ... Petitioners

versus

Shree Sahyadri Co-op. Housing Soc. Ltd. ... Respondent

WITH

INTERIM APPLICATION NO.1290 OF 2026

IN

WRIT PETITION NO.2159 OF 2026

Ganpat Fatu Naik (deceased) through legal
heirs Savitri Ganpat Naik and Ors. ... Applicants/Petitioners

versus

Shree Sahyadri Co-op. Housing Soc. Ltd. ... Respondent

Mr. Sandeep Mishra with Ms. Madhura Mulay, for Petitioners in WP
Nos.15991 of 2025, 2163 of 2026, 2161 of 2026 and 2159 of 2026 and for
Applicants in IAs.

Mr. Suraj N. Naik i/by Mr. Roshan Hule, for Respondent – Society.

CORAM: N.J.JAMADAR, J.

DATE : 24 FEBRUARY 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. These Petitions under Article 227 of the Constitution of India assail the legality, propriety and correctness of the identical orders passed by the

executing Court in execution proceedings, whereby the applications preferred by the Petitioners – judgment debtors in proceedings under Section 47 of the Code of Civil Procedure, 1908, seeking permission to lead evidence, came to be rejected.

3. The Respondent – Plaintiff / decree holder, instituted suits to recover possession of the shop premises from the Petitioners – Defendants on the ground that the Defendants had committed default in payment of rent, and, thus, there was forfeiture of tenancy. By judgments and decree dated 21 December 2012, the trial Court decreed the suits. The Defendants were directed to hand over possession of the suit properties and pay arrears of rent. The Defendants preferred appeals before the District Court. By judgments and orders dated 29 November 2016, the learned District Judge affirmed the decree passed by the trial Court, finding no infirmity therein. Civil Revision Applications preferred against the decrees were dismissed by this Court by an order dated 13 November 2017. The decrees of eviction, thus, attained finality.

4. In the execution petitions filed on behalf of the Plaintiff / decree holders, the Defendants / judgment debtors filed application under Section 47 of the Code. By an order dated 11 June 2019, the executing Court framed preliminary issue “whether the objections of the judgment debtors are maintainable?” It was further directed that, if any party wants to lead

evidence, then it shall move separate application.

5. The judgment debtors preferred applications seeking permission to lead evidence. Those applications were resisted by the decree holder.

6. By the impugned orders, the executing Court dismissed the applications observing, inter alia, that the objections sought to be raised on behalf of the judgment debtors that the decree holder is not the owner of the land, over which the suit shops stand, and the said area has been surrendered by the Plaintiff / decree holder to the Thane Municipal Corporation as a set-back area, was raised before the District Court and has been squarely dealt with and negated by the learned District Judge. As the executing Court cannot go behind the decree, permission to lead evidence cannot be granted. The executing Court also referred to the fact that the applications to lead evidence were pending since the year 2019 and it appeared that the said applications were filed with a view to delay the execution of the decree.

7. Mr. Mishra, learned Counsel for the Petitioners, submitted that the executing Court committed an error in declining permission to lead evidence as the executing Court has itself framed the issue about the maintainability of the objections. The question as to whether the Plaintiff / decree holder is the owner of the premises, and, was, thus, entitled to sue for the eviction of the Defendants, goes to the root of the matter. The Defendants, thus, deserve an

opportunity to lead evidence to establish that the decrees for eviction cannot be executed as the decree holder is not the owner of the shop premises. Thus, the impugned orders warrant interference.

8. Mr. Naik, learned Counsel for the Respondent – decree holder, countered the submissions on behalf of the Petitioners. It was urged that the possession warrant has already been issued. The endeavour of the judgment debtors is to further delay and defeat the execution of the decrees passed prior to 10 years. All the contentions which are sought to be raised in the application under Section 47 of the Code, were already raised before the District Court.

9. I find substance in the submissions on behalf of the Respondent. In paragraphs 35 to 45 of the judgments, the learned District Judge has adequately delved into the contentions on behalf of the Defendants that the Plaintiff ceased to be the owner of the demised shops. Learned District Judge has repelled the challenge on the ground that the tenants estoppel contained in Section 116 of the Evidence Act, was attracted and the Defendants were precluded from questioning title of the Plaintiff at the inception of the tenancy, and that the definition of the landlord under the Maharashtra Rent Control Act, 1999, was not restricted to that of the owner of the premises.

10. It would be contextually relevant to note that, since the Civil Revision Applications against the judgments and decrees passed by the District Court

were rejected by this court, it is not open for the Petitioners – judgment debtors to re-agitate the very same issue in the form of objection to the execution of the decrees.

11. At any rate, recording of evidence in a petition under Section 47 of the Code, is not a matter of course. It cannot be laid down as a rule that in each and every case, it is incumbent to record the evidence to determine the questions raised under Section 47 of the Code or an obstruction to execution under Rule 97 of Order 21 of the Code. In the case of **Silverline Forum Pvt Ltd Vs Rajiv Trust And Anr.**¹, a three Judge Bench of the Supreme Court enunciated that the words, “all questions arising between the parties to a proceeding on an application under Rule 97” would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the obstructionist raised it. The executing Court can decide whether the resister or obstructionist is a person bound by the decree and he refused to vacate the property. That question squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication enumerated therein need not necessarily involve a detailed enquiry or collection of evidence. The Court can make the adjudication on admitted facts or even on the averments made by resister. Of course the Court can direct the

1 (1998) 3 SCC 723

parties to adduce evidence for such determination, if the Court deems it necessary.

12. In the case of **Rahul S Shah Vs Jinendra Kumar Gandhi & Ors.**², another three Judge Bench of the Supreme Court, after highlighting the travails of the decree holder in not being able to enjoy fruits of litigation on account of inordinate delay caused during the process of execution of decree, emphasized that the claims under Order 21 Rule 97 or Rule 99 must be dealt strictly and be considered/entertained rarely.

13. The Supreme Court issued mandatory directions to all the Courts in dealing with the execution proceedings. The directions in Clauses 10, 11 and 12 are material and hence extracted below:

“42.

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... ..

10. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

11. The Court should allow taking of evidence during the

2 AIR 2021 SC 2161

execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

12. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.”

(emphasis supplied)

14. In the aforesaid view of the matter, the executing Court, in the context of the nature of the objection put-forth by the Petitioners, was justified in declining to give an opportunity to adduce evidence. This Court, therefore, does not find any infirmity in the impugned orders.

15. The Writ Petition, thus, stand dismissed.

16. Interim Applications also stand disposed.

(N.J.JAMADAR, J.)