



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6405 OF 2025

Kusum Mahadeorao Patil, Age: 82 years, Occ: Housewife,
R/o 5/2, Priyadarshini Apartment, Near RTO, Nagpur.

PETITIONER

VERSUS

Vaishali Ashok Nitnawre, Aged: 48 years, Occ: Housewife,
R/o Near Shiv Mandir and Food Corporation of India Godowns,
Chunabhatti Road, Post Vivekanand Nagar, Nagpur.

RESPONDENT

Shri M.A. Qureshi, counsel for the petitioner.
Shri J.B. Kasat and Shri C.R. Najbale, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 26, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. The petitioner's challenge in the instant petition is to the order dated 18.08.2025 passed by the Court of 8th Joint Civil Judge (Senior Division), Nagpur in execution proceedings bearing Special Darkhast no.114 of 2019. By this order, the executing Court has rejected the application filed by the judgment debtor at Exhibit 23 seeking review of the orders dated 05.04.2024 passed below Exhibits 8 and 9.

3. The controversy involved in the instant petition arises out of execution proceeding bearing Special Darkhast no.114 of 2019 which was filed by the decree holder (respondent herein) for execution of the decree in Special Civil Suit no.682 of 2005 for specific performance of contract. The decree was passed by the first appellate Court and upheld in the

second appeal by this Court. The judgment debtor had raised an objection to the execution of the decree by alleging forgery and fraud on the part of the decree holder on several grounds and after receiving Court's notice in Special Darkhast no.114 of 2019, the judgment debtor filed two applications at Exhibit 8 for dismissal of execution proceedings and at Exhibit 9 for stay to the execution proceedings which came to be rejected by order dated 05.04.2023. Thereafter, the judgment debtor filed an application at Exhibit 23 seeking review of orders passed below applications at Exhibits 8 and 9 which came to be rejected by order dated 18.08.2025. This order is subjected to challenge by way of instant petition.

4. The primary contention canvassed on behalf of the petitioner is that the impugned order is passed by the Court of 8th Joint Civil Judge (Senior Division), Nagpur which has not actually heard the arguments on the said applications and the arguments were infact heard by the earlier Presiding Officer. The learned counsel for the petitioner submitted that the hearing on the said applications was conducted on 12.03.2025 before the Court of 15th Joint Civil Judge (Senior Division), Nagpur and no orders were passed after hearing was concluded. Thereafter, the matter was transferred to the Court of 14th Joint Civil Judge (Senior Division), Nagpur and further to the Court of 18th Joint Civil Judge (Senior Division), Nagpur before whom no hearing was conducted and no orders were passed on the said applications. Thereafter, the matter was transferred to the Court of 8th Joint Civil Judge (Senior Division), Nagpur who had passed the order and

rejected the said application. The learned counsel for the petitioner thus submitted that the impugned order came to be passed by a Presiding Officer who had not heard the arguments and therefore the order is unsustainable on this count.

5. Opposing the petition, Shri J.B. Kasat, learned counsel for the respondent-decree holder vehemently submitted that the order was passed on the application at Exhibit 23 after hearing the learned counsel as the order mentions the word 'Heard'. By inviting attention to the order-sheet dated 18.08.2025 of execution proceedings, he submitted that the order-sheet records that both the parties and their counsel were present and the order was passed on that day on the application at exhibit 23. He thus submitted that the order is rightly passed by the trial Court after considering relevant aspects and it needs no interference on any count.

To controvert the contentions of the learned counsel for the respondent, learned counsel for the petitioner strenuously submitted that although the order mentions word 'Heard', there was actually no hearing conducted on that day as the counsel had attended the Court in the second half for the purpose of submitting arguments on the application, however, it was informed that the order was already passed on that day. In support of his contentions, the learned counsel for the petitioner has filed a specific affidavit dated 25.02.2026 sworn by himself in which it is specifically stated that on 18.08.2025, the matter was listed before the Court of 8th Joint Civil Judge (Senior Division), Nagpur at the stage of

orders and when the learned counsel went to the Court in the second half at around 3.30 p.m., he was informed that the order was already passed. In the affidavit, he has specifically stated that he has not argued the case before 8th Joint Civil Judge (Senior Division), Nagpur even though he attended the Court on the day which fact is reflected from the order-sheet. On the basis of his affidavit, he submitted that on 18.08.2025, the matter was fixed for orders on Exhibit 23 and not for hearing on Exhibit 23 on which day the order was passed without hearing the arguments by the said Court.

6. While considering the controversy, particularly about the contention with respect to the opportunity of hearing to the judgment debtor on the application for review, it has to be seen that the impugned order is passed by the Court on the said application however a perusal of the reasoning reveals that the issues are considered on the basis of record available before the Court. It has also to be noted that the matter was fixed at the stage of orders and not for hearing on Exhibit 23. The learned counsel for the petitioner who was appearing as a counsel for the judgment debtor before the executing Court has filed an affidavit dated 25.02.2026 before this Court sworn by himself categorically stating that he had attended the Court on that day at about 3.30 p.m. and the order was already passed. As such, although it is not disputed that the counsel was present on that day before the Court, the repeated submission that the matter was not heard on that application on the day needs consideration.

7. Although the court has mentioned in paragraph two of the impugned order that the matter was heard, however considering the overall factual circumstances pointed out by the counsel for the petitioner and the affidavit of the counsel, I do not find any reason to disbelieve the contentions canvassed on behalf of the petitioner. Therefore, in the interest of justice an opportunity needs to be granted to the petitioner to submit arguments on the application for review at Exhibit 23. It has to be noted that the execution proceedings are with respect to certain valuable rights claimed by the judgment debtor and needs adjudication after affording an opportunity of hearing to both the parties.

8. In view of the above mentioned factual and legal aspects, in the interest of justice the matter needs to be remitted to the executing Court for deciding the application at Exhibit 23 afresh. Hence, the following order is passed.

- I. The writ petition is allowed.
- II. The order dated 18.08.2025 passed by the Court of 8th Joint Civil Judge (Senior Division), Nagpur on application at Exhibit 23 in Special Darkhast no.114 of 2019 is quashed and set aside. The matter is remanded to the Court of 8th Joint Civil Judge (Senior Division), Nagpur for deciding the application for review at Exhibit 23 in Special Darkhast no.114 of 2019 afresh after giving an opportunity of hearing to both the parties.
- III. The parties are directed to appear before the executing Court on 07.03.2026 and the executing Court is requested to decide the

application at Exhibit 23 preferably within two weeks after the arguments are heard. The parties are directed to co-operate the Court for expeditious decision of the execution case without seeking unnecessary adjournments.

9. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE