



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2335 OF 2026

Mohd. Aziz Khan Khalil Khan
Aged about 60 years, R/o Ward No.2,
Ayesha Colony, Paratwada,
Amravati.

... Petitioner

Versus

Deepak s/o Nagarao Mange
Aged about 32 years, Occ.: Cultivator,
R/o. Deomali, Paratwada, Tq. Achalpur,
Dist. Amravati.

... Respondent

Mr. Raheel Mirza, Advocate for petitioner.

Mr. S.S. Sarda, Advocate for respondent/caveator.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 06.04.2026

JUDGMENT:

Heard.

(2) **Rule.** Rule made returnable forthwith. Heard finally by the consent of the learned counsel for the rival parties.

(3) By this petition, the petitioner-the Judgment Debtor has challenged an order passed by the Executing Court rejecting his application for recalling the order of warrant of possession.

(4) The petitioner is a Judgment Debtor in the execution

proceedings initiated by the respondent for execution of judgment and decree passed in Special Civil Suit No.28/2021. The execution proceedings are with respect to execution of the compromise decree which was passed in the suit for specific performance of contract.

(5) In accordance with the compromise, the decree of specific performance was to be executed and accordingly, although the Decree Holder made payment of balance consideration, however, the possession of the suit property was not handed over and therefore, the Decree Holder filed an application for issuance of warrant of possession. The Executing Court issued warrant of possession with respect to the suit house by considering the compromise entered in between the parties and by considering the fact that the Decree Holder had paid an additional amount of Rs.30,00,000/- to the Judgment Debtor as part of the remaining consideration. Thereafter, the Judgment Debtor filed an application (Exhibit 72) for recalling the order of possession warrant, which came to be rejected by order dated 02.02.2026, which is subjected to challenge by way of instant petition.

(6) Mr. Raheel Mirza, learned counsel for petitioner submitted that in absence of any specific decree of possession, the Decree Holder is not entitled to obtain possession and the warrant of possession

therefore deserves to be cancelled. He submitted that the Executing Court has to execute the decree as it is, and the issuance of warrant of possession beyond the scope of decree is unsustainable.

(7) As against this, Advocate Mr. Sarda, learned counsel for respondent opposed the petition and submitted that the Decree Holder is entitled for possession of the suit house, in accordance with the compromise decree, particularly because the Judgment Debtor has accepted the amount of Rs.30,00,000/- paid by him as balance consideration in accordance with the compromise. By relying upon judgment of the Co-ordinate Bench of this Court in the matter of *Baliram s/o Tulsiram Kakde Vs. Raghunath s/o Bhagwanji Hood* reported in 2020(3) Mh.L.J. 311, he submitted that the decree of specific performance would encompass within itself the relief of possession and by referring to the legal position, he opposed the petition.

(8) The controversy involved in the instant petition is whether the Judgment Debtor can seek recall of possession warrant only on the ground that the decree under execution is only for specific performance of contract without specifically mentioning the direction to hand over possession. It has to be noted that undisputedly the parties have compromised the entire controversy and accordingly, out of total sale consideration of Rs.90,00,000/-,

the Decree Holder has paid the remaining amount of Rs.30,00,000/- to the Judgment Debtor. It has to be noted that the decree for specific performance of contract is not challenged and on the contrary, it has been complied with. The only challenge raised by the Judgment Debtor is to the order of warrant of possession on the pretext that the decree is not for possession. While dealing with the controversy, the legal position as laid down by the Co-ordinate Bench in ***Baliram Vs. Raghunath*** (referred supra) needs to be taken into consideration. In this case, while dealing with an identical controversy, it has been observed that decree for specific performance encompasses within itself, the relief of possession, even if, the same is not specifically stated. The relevant paragraph being para No.6 from the said judgment is reproduced below:

“It is trite that once the Court grants a relief of specific performance, the decree would encompass, within itself, the relief of possession, even if the same is not specifically so stated, otherwise the decree itself would become otiose in as much as the decree – holder may have the title due to the execution and registration of the sale of the suit property in his favour, but would not be entitled to possession. In such a case, the decree, would merely be a paper decree without any factual relief coming to the decree – holder. Such a situation, is not permissible in law. Though, Section 22 of the Specific Relief Act, 1963 contemplates to correct this anomaly, in case

it occurs, however Section 22 of the Specific Relief Act, 1963 can always be said to be an ancillary provision, enacted for the purpose of giving full effect to the decree for specific performance. In any case Section 22 of the Specific Relief Act, 1963 cannot be held to have an effect of denying the relief of possession in case its dictum is not followed. That surely cannot be the intention of the legislature, as the legislature does not enact contradictory laws. The provisions of Section 22 of the Specific Relief Act, 1963, thus cannot be interpreted to have created a bar for the grant of possession, in case the decree does not provide for the same, the position is rather to the contrary.”

(9) Applying this legal position to the instant case, it has to be noted that the decree for specific performance of contract is not challenged, and the decree has attained finality. Despite receiving the entire sale consideration from the Decree Holder, the Judgment Debtor has failed to deliver possession of the suit house. In this situation, there is no right with the Judgment Debtor to retain the possession of the suit house and raise a challenge to the possession warrant by raising unnecessary issues. The application filed by the Judgment Debtor for recalling the possession of warrant (Exhibit 72) is clearly an attempt to somehow prolong the execution proceedings. After having received the entire sale consideration based on the compromise in between the parties, the Judgment Debtor is duty bound to

handover the possession of the suit house to the Decree Holder. As such, the application filed by the Judgment Debtor deserves to be rejected as rightly ordered by the Executing Court.

(10) A perusal of the impugned order reveals that the Executing Court has given due consideration to the relevant factual and legal aspects and passed the reasoned order.

(11) In view of the above mentioned factual and legal aspects, no case is made out by the petitioner seeking indulgence under Article 227 of the Constitution of India and hence, the petition is dismissed.

(12) Rule stands discharged. No order as to costs.

[Prafulla S. Khubalkar, J.]

Prity