

**ORDER BELOW EX. 42**

The instant application is filed by Judgment debtor seeking copy of application filed by Decree Holder for issuance of possession warrant alongwith copy of Judgment and Decree. Perused the application and reply filed by Decree Holder. Heard learned counsel for rival parties.

2] It is the contention of Decree Holder that in order to fill say on application for issuance of possession warrant, copy of said application alongwith other documents needs to be supplied by the Decree Holder. Learned counsel Mr. Maskare submitted that as the appeal preferred is dismissed, in order to contest the matter he needs to file a detailed say for which copies are required. Per contra, learned counsel Mr. Sheikh vehemently opposed the instant application and prayed for dismissal of the same.

3] Perused the record. It is pertinent to note here that, the matter in question is of the year 2010. The Decree Holder has filed on record copy of judgment and decree passed by this court on 30.1.2008. It is also relevant to note that, the said copy is annexed with the execution proceedings since the date of institution. Also, it would not out of place to mention here that, application for issuance of possession warrant was filed below Exh. 40 on 18.7.2018. Since then, almost two months was elapsed. During the said course, this matter was taken by this court, however, on none of the previous dates the applicant i.e. Judgment Debtor has applied for copy of application. Moreover, for filing of detail say the judgment and decree is already annexed with the proceedings. Thus, I find no merits in arguments canvassed by Mr. Maskare. Accordingly, I concur with the submissions of learned counsel Mr. Sheikh and proceed to pass the following order:

**O R D E R**

- 1 Application stands rejected.
- 2 Matter to proceed further.

Date:4.09.2018

(S.A.Ingley )  
Civil Judge Jr. Dn.,Deori.

ORDER BELOW EX. 40

1] The instant application is filed at the instance of Decree Holder for issuance of possession warrant. Brief facts leading to filing of instant application as follows :

The Decree Holder had filed the instant execution proceedings in pursuance to the judgment and decree dated 30.1.2008. On the institution of execution proceedings, the Judgment Debtor appeared before this court. During the course of proceeding the Decree Holder had filed an application under section 151 r/w section 94 of Code of Civil Procedure for restoration of his possession. This court vide order dated 9.9.2015 ordered the Judgment Debtor to restore the possession of suit property in favour of Decree Holder within a period of one week. Being aggrieved by the said order, the Judgment Debtor had approached before Hon'ble Principal District Judge Gondia by filing M.J.C. no. 63/2015 for condonation of delay in filing Misc. Appeal. The Hon'ble Principal District Judge, Gondia vide order dated 7.4.2016 allowed the application subject to payment of cost of Rs. 1000/-. Judgment Holder in pursuance to the same complied with the order of Hon'ble Principal District Judge Gondia and filed M.C.A. no. 22/2016.

2] My learned predecessor had observed the order sheet that said appeal preferred by Judgment Debtor is under stay by the Hon'ble District Judge Gondia. The said fact was not verified by

the parties to the instant proceedings. However, on 18.7.2018 learned counsel Mr. Sheikh appearing for Decree Holder made a statement before this court that the matter was not stayed by the Hon'ble District Court Gondia. However, both the counsels jointly submitted that M.C.A. no. 22/2016 preferred by Judgment Debtor is kept for final arguments and would be decided soon. Thereafter, the Hon'ble District Judge-1 Gondia was pleased to dismiss the appeal filed by the Judgment Debtor on 24.8.2018. The Judgment passed by the Hon'ble District Judge-1 has not been disputed by either of the parties. Thus, the situation before this court today is that, neither the judgment and decree dated 30.1.2008 is challenged before any forum nor any order or judgment has passed against the Decree Holder. In such a situation, the Decree Holder is entitled for restoration of his possession.

3] At this juncture, it is relevant to note that, the matter is of the year 2010. The Decree Holder has been deprived of fruits of his decree for a period of more than eight years. Granting any further time to the Judgment Debtor would amount to abuse of process of law, as the Decree Holder would suffer irreparable loss. Considering all the above aspects, I concur with submissions of Mr. Sheikh and accordingly, proceed to pass the following order:

**O R D E R**

1 Issue Possession warrant against Judgment Debtor regarding the suit property as specified and mentioned in judgment and decree dated 30.1.2008.

2] The Judgment Debtor is hereby directed to restore the possession of the suit property to the Decree Holder within a period of one week from today.

3] If the Judgment Debtor fails to comply with the order of this court, the Decree Holder shall be at liberty to seek assistance of the court in that respect.

4] Special bailiff, if sought is allowed on payment of necessary charges.

Date:4.09.2018

(S.A.Ingley)  
Civil Judge Jr. Dn.,Deori.