

ORDER BELOW EXH. 121 IN R.D. NO. 50/2010
(Chandrakant and another vs. The Collector, Nanded and others)

This application filed by judgment debtor nos. 6. Abbas Husainsab, 8. Babusab Sayedsab, 10. Ramkishan Maroti, 11. Lalaji Digambar Shinde, 12. Mathurabai Raghunath Jadhav and 17. Meerasab Nabisab Qureshi under Section 47 read with Ordeer XXI rule 98, 99 and 100 of the Code of Civil Procedure, 1908. Thereby, above mentioned judgment debtors prays that not to execute decree in RCS No. 78/2004 against them.

2. Learned advocate for judgment debtor nos. 6, 8, 10, 11, 12 and 17 urged that judgment debtor nos. 6, 8 , 10, 11, 12 and 17 served with the suit summons. However, they did not property represented their case before the Court. Even though they have not filed written statement in their defence. Furthermore, prior to filing of the suit RCS No. 78/2004 the suit land was already allotted to above mentioned judgment debtors by the Collector, Nanded and government authority under the scheme of Indira Awas Yojana. The said fact also admitted by decree holder in the original suit. Thereafter, also he prays for recovery of possession of the said property. Since the decree holder admitted possession of above mentioned judgment debtors

in above mentioned suit. Hence, they are not entitled to claim recovery of possession of the suit property. As the suit itself is not tenable. The decree in a suit become a in executable on the ground that the Government of Maharashtra already handed over possession of the suit property to the judgment debtors under Government Scheme of Indira Awas Yojana. The above mentioned judgment debtors are permissive in possession of the suit property. Therefore, erection of electricity Court from the suit property itself is illegal. The Government already constructed Latrine bathrooms under various scheme of Government for rural area. As per provisions of Section 47 read with Order XXI rules 98, 99 and 100 of CPC. All questions for execution, discharge and satisfaction of the decree required to be decided in present suit. Therefore, the decree in RCS No. 78/04 may not be executed.

3. As against this, judgment debtor no. 1 filed say at Exh. 123 and thereby he strongly opposed the application. Learned advocate for the decree holders urged that in response to the notice above mentioned the decree holders negligent and could not appeared before the Court. The execution petition is pending since

2010 and this Court issued possession warrant in respect of the suit property. Thereafter, this application came to file on record in order to cause delay in the proceeding. The plaintiffs also pleaded in the suit that defendant nos. 1 to 4 in a suit RCS No. 78/2004 illegally implemented the scheme of Indira Awas Yojana in the suit property and have not taken recourse of law. Therefore, the above mentioned judgment debtors have no right to be obstructed while execution of decree. Moreover, the above mentioned judgment debtors preferred an appeal before the Hon'ble District Judge-1, Biloli. Same is pending for hearing on the application for condonation of delay which is 8 years 11 months in filing the appeal. Hence, the application be rejected with costs.

4. Considering aforesaid submission and on perusal of record and proceeding in this execution petition, it shows that on 21.07.2008 decree in RCS No. 78/2004 prepared by my learned predecessor. Above mentioned judgment debtors were party to the suit and the decision in the suit is within their knowledge on the day of filing of the execution petition and subsequently, when notice duly served upon them. It is objected by learned advocate for above

mentioned judgment debtors that the decree is nullity as the above mentioned judgment debtor were not properly represented in the suit. In such circumstances, whether the objection raised by above mentioned judgment debtors in respect of in executable decree on the ground that the judgment debtors not properly represented in the suit.

5. At this juncture it will useful to examined statutory provisions thus.

6. As per Section 47 of CPC all questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution, discharge or satisfaction of decree. No separate suit is contemplated. Scope of Section 47 of CPC is very limited and narrow right to raise the objection by judgment debtor does not means that they can reopen the matter. That is not intention of the legislature where jurisdiction being extremely limited and narrow, the objection must fall within the ambit and scope of the scheme.

7. There are following conditions which must be cumulative satisfied for applicability of Section 47 of CPC. These are as under :

1. The question must be one arising between the parties to the suit in which the decree is passed, or their representatives ; and

2. It must relate to the execution, discharge or satisfaction of the decree. Section 47 of CPC pre-supposes the existence of a decree which is capable of execution. Questions arising between the stranger are out of per view of Section 47.

8. The principle behind enactment of Section 47 of CPC that the matter relating to the execution, discharge or satisfaction of a decree and arising between the parties and their representative. No were incorporated in the Section 47 that non representation of the suit properly is result nullity of decree. The intention of legislature is to decide all questions relating execution, discharge or satisfaction of a decree which arises in between the parties and their representatives.

9. In the case at hand the decree holders obtained decree for possession on 21.07.2008 and fighting for fruits of decree since 2010 till today. As the Court which pass a decree has observed that the Government implemented scheme of Indira Awas Yojana over the suit property and the implementation of the scheme itself is a illegal.

Thereby, the suit has been decreed in favour of decree-holder and thereby directed to above mentioned judgment debtor to hand over vacant possession of the suit property to the plaintiff. The said decree which is under execution has not been challenged by above mentioned judgment debtors as the execution petition is well within the knowledge of the decree holder since long back. In such circumstances, above mentioned judgment debtors are not entitled to seek the relief of non-execution of the decree on the ground that they were not properly representative in the suit. Hence, I pass following order :

ORDER

1. In view of the body of the order the application is rejected with no order as to costs.

Date: 01st March 2018.

Sd/-
(Satish B. Hiwale)
Civil Judge S.D.,
Biloli.

