



R.D.No.09/2019

Nemaram+02 vs. Roha Construction+01

CNR No.MHRG090009842019

ORDER BELOW EXH.19

(Passed on 06/07/2023)

Through the present application decree holders prayed for re-issuance of possession warrant as per Order XXI Rule 35 read with Section 151 of the Code of Civil Procedure,1908 alongwith grant of police protection.

02. It is submitted by the decree holders that on first occasion possession warrant could not be executed as there was lock put up to the shop. On the second occasion, possession warrant could not be executed as the judgment debtor No.02 obstructed the bailiff in completing said procedure.

03. The judgment debtor No.02 filed his say (Exh.21). As per his say, he has preferred appeal against the judgment passed by this Court in R.C.S.No.54/2011. Due to the delay in filing of appeal, he filed delay condonation application. Decree holders did not accept service of notice through RPAD and it was returned as unclaimed. Thus, he prayed for stay to the present proceeding.

04. Read the application and say. Heard the learned advocate of the decree holders and the judgment debtor No.02. Gone through the record. In support of submissions in the application the learned advocate of decree holders relied on the ruling of the Hon'ble Parent High Court in the case of *Jigna Mahesh Thakur vs. Heena Builders and Developers and others*, **2021(6) ALL MR 596**. Similarly the learned advocate of the judgment debtor No.02 relied on the ruling of the Hon'ble Supreme Court in the case of *Babu Lal vs Rajkumar*, 1996(3) SCC 154.

05. Perusal of the decree shows that defendant Nos.01 and 02

were directed to handover open possession of the suit property within the period of two months from the date of judgment. In absence of the same plaintiffs were permitted to obtain possession through the court procedure. Importantly, the judgment in R.C.S.No.54/2011 was passed on 22/10/2019. Record as well as say filed by the judgment debtor No.02 shows that he did not prefer appeal within the stipulated period. Record does not show any stay order. Nor it is the case of judgment debtor No.02. This Court already issued possession warrant as prayed by the decree holders earlier. Importantly, perusal of bailiff report dated 14/06/2023 specifically shows that the judgment debtor No.02 obstructed bailiff for handing over possession of the suit property.

06. I have gone through the ruling in the case of *Jigna Mahesh Thakur* (supra). It is seen that the Hon'ble High Court in the above ruling directed forcible possession of the suit property with the aid of Police as judgment debtors were not cooperating in compliance of the decree. The said observations aptly applies to the matter in hand due to similarity of situation. I have also gone through the ruling in the case of Babu Lal (supra) relied on by the learned advocate of the judgment debtor No.02. In my most respectful submission, said ruling is not helpful to the judgment debtor No.02 as appellant seen to the not party in the proceeding. However, in the matter in hand the judgment debtor No.02 was party to the suit.

07. In the supra set of facts and circumstances, I am of the considered view that present application needs to be allowed for taking the matter to its logical end. Hence, I pass the following order.

ORDER

01. The application (Exh.19) is allowed.
02. Reissue possession warrant as per Order XXI Rule 35 of the Code

(Below Exh.19)

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of Civil Procedure,1908 as prayed by the decree holders.

03. Police protection of one male and one female police personnel is granted subject to payment of necessary charges by the decree holders at the concern Police Station.

Place : Roha.
Date : 06/07/2023.

(S.S. Mahale)
Civil Judge Junior Division,
Roha.