



**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION,
AT MALVAN, DISTRICT-SINDHUDURG**

Ulhas alias Vilas Narayan Dandkar

**Applicant/
Obstructionist**

VERSUS

Arvind Gopal Parkar
Through Legal Representatives

**Opponent/
Decree Holders**

COMMON ORDER BELOW EXHIBIT 35 AND 36 IN R.D.NO.4/2009
(Passed on 13/09/2019)

These are applications by the obstructionist for staying the execution of decree and under Order XXI Rule 97 of the Code of Civil Procedure (hereinafter for short 'the CPC') respectively.

[2] It is the contention of the obstructionist that Malvan Municipal House No. 1122(1) is the subject matter of the present application [hereinafter for short 'the suit house']. He is staying in the suit house and is a tenant in it as per the provisions of the Rent Control Act. It is his contention that he stays at Mumbai for his service but he visits Wayari frequently and stays in the suit house during the said period. The judgment debtor is his real brother. It is his contention that he was not aware about the civil suit bearing RCS. No. 63/2006 and the appeals upto the Hon'ble High Court between the decree holder and the judgment debtor. He was not a party to the civil litigation and the decision in it is not binding on him. It is contended that the decree holder and the judgment debtor intentionally abstained from impleading the obstructionist as party to

the civil litigation to deprive him of his rights. He came to know about the pendency of the litigation and the present execution petition only in September 2015. He has filed a civil suit bearing RCS No. 19/2016 and has sought relief against the judgment in RCS No. 63/2006.

[3] It is his further contention that the predecessors of the obstructionist were staying in the suit house from 1931-32. His grand mother (mother's mother) Satyabhama Pandurang Karangutkar was staying in the suit house since 1931-32 alongwith her daughter Krushnabai Pandurang Karangutkar. The obstructionist and the judgment debtor are children of Krushnabai Pandurang Karangutkar. The obstructionist and his predecessors are staying in the suit house for more than 80 years. It is his further contention that he has obtained electric connection to the suit house out of his own expenses. Further, it was orally agreed between the predecessors of the decree holder and the obstructionist that the rent of suit house shall be payable by way of making payment of the house tax of the suit house. He is paying the house tax out of his income. He and his predecessors are paying the land revenue, house tax, light bill and all other taxes of the suit house. The decree holder, his predecessors and siblings were aware of the above facts. But still the decree holder instituted RCS No. 63/2006 raising a frivolous claim that judgment debtor alone was a licensee and the oral license was terminated. Moreover, apart from him, the judgment debtor, his wife Sou. Sneha Santosh Dandkar, son Saish Santosh Dandkar, their sister Smt. Kumodini Narayan Dandkar, maternal sister Pramila Vishwas Hindlekar and sworn sister Alka Lau Bhojane were staying in the suit house. It is his further contention that his relations with the judgment debtor and his

sisters were not good. Therefore, he had no knowledge of the civil litigation between the judgment debtor and decree holder.

[4] It is his further contention that after becoming aware of the civil litigation, he obtained copies of decision in RCS No. 63/2006 and RCA No. 139/2008. He found that the judgment debtor had contested the suit on incorrect information. Further, a plea was raised by the judgment debtor in RCS No. 63/2006 that the plaintiff had failed to join all necessary parties to the suit. But the plaintiff failed to implead the necessary parties. Therefore, the judgment in RCS No. 63/2006 is a nullity.

[5] Lastly, it is contended by the obstructionist that the persons who were licensee's prior to 1972, became tenants and as such the decree holder was bound to take action against all the interested person under the provisions of the Rent Control Act. But instead of doing so he merely filed a suit against the judgment debtor. The obstructionist has become a permanent tenant in the suit house. Therefore, the decree holders cannot obtain the possession of the suit house in the present execution proceedings. If the obstructionist is dispossessed in execution of decree passed in RCS No. 63/2006, he will suffer irreparable loss. There is no other place of residence to the obstructionist except the suit house. Therefore, it is necessary to protect his possession. Hence, in view of application below Exhibit 36 it is prayed that the possession of the obstructionist in the suit house shall not be handed over to the decree holder. Further, in view of application below Exhibit 35 it is prayed that the execution proceedings be stayed till the decision of the RCS No. 19/2016.

[6] During the pendency of the execution proceeding the decree holder died and his legal heirs were brought on record as his legal representatives. Decree holder No. 1A is wife of the original decree holder and decree holders No. 1B and 1C are his children. The decree holders have denied the contentions of the obstructionist. It is their contention that the suit house was constructed by Gopal Laxman Parkar i.e. grandfather of the decree holder. He allowed Satyabhama Pandurang Karangutkar i.e. grandmother of the obstructionist to stay in the northern portion of the suit house as licensee. She was staying alongwith her daughter i.e. mother of the obstructionist. The judgment debtor forcibly and illegally constructed a hut to the eastern side of the suit house. Therefore, the deceased decree holder instituted RCS No. 63/2006 and claimed possession of the suit house and the suit property. He also claimed injunction against the judgment debtor i.e. brother of the obstructionist. The said suit was decreed and the decree for possession was confirmed till second appeal No. 175/2014. The obstructionist has moved the present application in order to harass the decree holders and to delay the proceedings as the judgment debtor will be required to vacate the northern portion of the suit house. The obstructionist has no right or *locus standi* to file the present application. The judgment debtor had never complained about non joinder of necessary parties to the suit in the suit proceedings. He also did not raise any such plea in his counter claim. The obstructionist and the judgment debtor have, in collusion, filed RCS No. 19/2016 in order to delay the execution of decree in RCS No. 63/2006.

[7] It is their further contention that the judgment debtor had raised a plea about tenancy in RCA No. 139/2008. But the said

plea was negatived. The obstructionist is not a permanent tenant. In fact he was never a tenant in the suit house. The obstructionist was aware of the previous litigation. The decision in RCS No. 63/2006 is binding on him. Hence, it is prayed that in view of the decision in RCS No. 63/2006, RCA No. 139/2008 and S.A. No. 175/2014 the present application be rejected.

[8] Heard the learned advocates for the obstructionist and the decree holders. Perused the record and proceedings of the case.

[9] The points for determination along with the findings and reasons thereon are as under :

SR. NO.	POINTS	FINDINGS
1.	Whether the obstructionist has raised a triable issue which requires adjudication in reference to his right, title and interest in the suit house ?	NO.
2.	Whether the present execution proceedings need to be stayed ?	NO.
3.	What order ?	The applications are rejected.

REASONS FOR FINDINGS

POINT NO. 1 :

[10] In order maintain an application under Order XXI Rule 97 of the CPC successfully, it is necessary for the obstructionist to first show that he is in possession of the property in a capacity independent to that of a judgment debtor. If the obstructionist shows

prima facie that he has a right to be in possession independent to that of the judgment debtor, then only there will arise a question of framing issues in respect of the dispute and adjudicating it in accordance with the provisions of Rule 101 and 103 of the CPC. In regard to the above view, I am guided by the decisions of the Hon'ble Bombay High Court in **Jagdish s/o Motilal Joshi Vs. Chandrapal S/o Tulshiram Bhola (2007) 1 Mah LJ 402** and **Kailashchandra Kedarmalji @ Kedarnath Agrawal Vs. Kochaveedu Varghese Joseph and Anr (2019) 1 Mah LJ 662**.

[11] The obstructionist has raised obstruction to the execution of decree in RCS No. 63/2006 mainly on the following grounds :

1. He is a tenant in the suit house.
2. In view of the provision of the Rent Control Act the persons who were licensee prior to 1972, became tenant and he is such permanent tenant.
3. He was completely unaware about the Civil litigation between the decree holder and the judgment debtor due to his constrained relations with the judgment debtor and his sister.

[12] Before proceedings to determine the question about the right, title and interest of the obstructionist it will be apposite to refer to the history of the litigation. The copy of judgment in RCS No. 63/2006 is at Exhibit 58, in RCA No. 139/2008 is at Exhibit 15A and SA No. 175/2014 is at Exhibit 29. The deceased decree holder had instituted RCS No. 63/2006 against the judgment debtor for recovery of possession of northern portion of the suit house, removal of hut in the suit property and vacant possession of the area under it and for perpetual injunction. It was contention of the decree holder that the

judgment debtor's grand mother was allowed to reside in the northern portion of the suit house as licensee. Her daughter i.e. mother of the obstructionist was staying with her. The judgment debtor raised a hut in the suit property without permission. Therefore, the license was terminated and possession was sought by the decree holder by instituting RCS No. 63/2006. The suit was decreed. It was unsuccessfully carried in first appeal by the judgment debtor. In the first appeal the decree in respect of possession of northern portion of the suit house was confirmed and that about injunction was modified. The decree in first appeal was further unsuccessfully carried by the judgment debtor in second appeal to the Hon'ble Bombay High Court where the appeal was dismissed as no substantial question of law arose. Thus, it is an admitted position that the decree in RCS No. 63/2006 and RCA No. 139/2008 has attained finality. It is only after the decision of second appeal that the obstructionist for the first time came before this Court raising his obstruction.

[13] The judgment debtor had resisted RCS No. 63/2006 on the ground that he and his brother i.e. the obstructionist are owners of the suit property. It was his story that the suit property was jointly purchased by Annapurnna Laxman Parkar i.e. plaintiff's grandmother and Satyabhama Pandurang Karangutkar i.e. defendant's grandmother. It was also his contentions that the suit house was jointly constructed by joint income of both of them. Satyabhama was owner of half share in the suit property and the suit house and Gopal Laxman Parkar was the owner of remaining half share. But he relinquished his half share in favour of Satyabhama and she became owner of the entire suit property and the suit house. The judgment

debtor had filed a counter claim in RCS No. 63/2006 praying that his family be declared owner of the suit property and the suit house. As already stated above, the plaintiff's story was accepted and the defendant's story was rejected alongwith his counter claim.

[14] The obstructionist has now come up with a completely different theory i.e. he and his family were tenants in the suit house. In fact he is claiming to be a tenant in the suit house on the basis of right of his predecessor i.e. Satyabhama Pandurang Karangutkar. At this stage it will be worthy to note the status of Satyabhama in the suit house. The same can be ascertained from the judgments in RCS No. 63/2006, RCA No. 139/2008 and S.A. No. 175/2014. The common finding of fact in respect of the status of Satyabhama Pandurang Karangutkar is that she was inducted as a gratuitous licensee in the suit house prior to 30 years from the date of filing of suit i.e. 24/05/2006. Therefore, it is clear that Satyabhama was not a tenant in the suit house.

[15] Moreover, it is not the case of the obstructionist that he was inducted as a tenant by the decree holder or their predecessors in the suit house in his individual capacity. On perusal of the obstruction petition, it is silent in respect of date from which the tenancy began. It is also silent about who was inducted as tenant from amongst his family by the decree holder or his predecessor. Moreover, on perusal of the averments in the obstruction petition, it is clear that the obstructionist has no such independent status than that of the judgment debtor or his predecessors. Whatever tenancy right he is claiming is through his predecessor Satyabhama. However, as above stated, Satyabhama was not a tenant in the suit house, but

was a gratuitous licensee. Thus, if the said plea of tenancy is considered along with the defence of the judgment debtor in RCS No. 63/2006, it will become clear that it is groundless. The plea appears to be raised merely to delay the present proceedings.

[16] The obstructionist also contended that he is also permanent tenant as his predecessor were licensee's prior to 1972. The plea raised by him is itself clear to show that he is claiming through his predecessor i.e. Satyabhama Karangutkar. Thus, again he is not claiming in his independent capacity. Be that as it may be, the plea about permanent tenancy or deemed tenancy was raised by the judgment debtor for the first time in RCA No. 139/2008. The Hon'ble District Court negatived the said plea of the judgment debtor on two fold grounds; firstly, that the plea about tenancy and licensee was in complete variation with the plea of ownership of judgment debtor and secondly that there was no evidence on record to show that Satyabhama occupied the suit house on 01/02/1973 as licensee. The decree has already attained finality. The rights and liabilities of the parties to the lis are already crystallized by the decree. Now, such right cannot be allowed to be scuttled by raising the same thing again and again by different persons. Thus, the plea raised by the obstructionist is again groundless and cannot be taken into consideration while determining his right, title or interest in the suit house.

[17] Lastly, the execution of decree is resisted on the ground that the obstructionist was not aware of the civil litigation between the decree holder and the judgment debtor. He is not bound by the decree and the decree is nullity as it was passed without the presence

of all the necessary parties. In respect of this objection, it is a matter of record that the obstructionist was not a party to RCS No. 63/2006. However, as aforesaid as he has failed to prove that he is in possession of the suit house in an independent capacity. In fact his averments in the obstruction petition and the findings of fact in RCS No. 63/2006 and RCA No. 139/2008 clearly show that he is objecting the delivery of possession only on the basis of the interest of his predecessor. Therefore, even if it is considered that he was unaware about the litigation, he has no right to stay in possession of the suit house. His right and claim as obstructionist is traceable through the judgment debtor.

[18] There is not material on record to show, even prima facie, that possession of the obstructionist or his entry in the suit house was independent and in exclusion to the judgment debtor. It is pertinent to note that, he is not an outsider or a stranger. He is a member of the family of the judgment debtor. He has failed to show that he is a person who has primary title in his own right since a time which is prior to the suit and the decree subject to execution. It is further pertinent to note that the judgment debtor had prayed in the counter claim that his family be declared owners of the suit house. It is also significant to note that the judgment debtor had averred in his written statement that after the death of Satyabhama Karangutkar he and his brother i.e. the obstructionist became owners of the suit house. Thus, it appears from the record that the judgment debtor was not fighting the case merely for himself. But it is apparent that he was contesting it for his entire family alongwith the obstructionist. If that be so, the plea of obstructionist about unawareness becomes doubtful. Moreover, his plea that he was not aware about the

litigation from 2006 to 2015, although he frequently visited the suit house, appears to be self contradictory. Further, it appears from the judgment in RCS No. 63/2006 that no plea about non joinder of the obstructionist was ever raised by the judgement debtor.

[19] Another significant thing which needs notice is that the judgment debtor has remained silent since the obstructionist has come in picture. This silence shows that he does not wish to put up any resistance to the execution of the decree itself. It is a matter of record that the judgment debtor will be required to vacate the suit house in accordance with the decree. Thus, now the position is that the judgment debtor is not actively resisting the execution and it is the obstructionist i.e. his brother who is putting up resistance. Thus, the conduct of the judgment debtor is sufficient to draw an inference that the obstructionist is set up by him to somehow delay the execution of the decree against him. In my opinion over all record of the case shows that the obstructionist is set up by the judgment debtor merely to delay the execution proceedings. The obstructionist has failed to raise any triable issue requiring adjudication in respect of his right, title or interest in the suit property in accordance with rule 101 and 103 of the CPC. Therefore, I answer point No. 1 in the negative.

POINT NO.2 :

[20] At the outset it is pertinent to note that there is no provision in the code of Civil Procedure to stay the execution of a decree on the ground that a suit is instituted by a person not a party to the decree. The learned advocate for the obstructionist referred to Rule 29 of Order XXI of the Cr.P.C. However, the said rule deals with

stay of execution pending suit between decree holder and the judgment debtor. Therefore, it is of no avail to the obstructionist in my view.

[21] The obstructionist has moved a petition under Rule 97 of Order XXI seeking adjudication of his right, title and interest in the suit house. The Hon'ble Supreme Court has held in the case of **Brahmdeo Chaudhari Vs. Rishikesh Prasad Jaiswal and Anr (1997) 3 SCC 694** that the provisions from Rule 97 to 106 of the CPC are a complete Code in itself and are sufficient to deal with all the aspects about the adjudication of the right of the obstructionist.

[22] Rule 101 of the CPC clearly specifies that all question relating to the right, title or interest in the property shall be determined by the Court dealing with the application under Rule 97 or 99 of the CPC. It further provides that such question relating to right, title or interest in the suit property cannot be determined by a separate suit. Thus, the provisions of the CPC bar a separate suit for determination of right, title or interest.

[23] Therefore, in the absence of a specific provision for stay in the present facts and the presence of provisions from Rule 97 to 106, I am of the view that the execution of decree in RCS No. 63/2006 cannot and need not be stayed. Therefore, I answer point No. 2 in the negative.

POINT NO. 3 :

[24] In view of answer to point No. 1 and 2, the applications at Exhibit 35 and 36 are liable to be rejected. The decree holders are

entitled to possession of the suit house even from the obstructionist.
Hence, I proceed to pass the following order -

ORDER

The applications at Exhibit 35 and 36 are rejected.

The obstruction by the obstructionist or anyone on his behalf or on behalf of the judgment debtor shall be removed and the decree be executed.

Issue possession warrant accordingly.

Date : 13/09/2019
Place : Malvan

Bhanupratap Chouhan
Civil Judge Junior Division

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER/JUDGMENT.”

Chandrakala Vasant Chavan
NAME OF STENOGRAPHER

Name of the PO	Shri. Bhanupratap Chouhan
Date of pronouncement	13/09/2019
Order signed by PO on	13/09/2019
Order uploaded on	17/09/2019