

Regular Darkhast No. 01 of 2026**Order Below Exhibit No. 17**

The decree holder have filed the present application for framing of issues.

02. It is contended that the judgment debtor has denied the petition's contentions. The judgment debtor has contended that the construction cannot be demolished as the house is old. Furthermore, it is contended that the Darkhast was not filed within the limitation period. Therefore, it is prayed that, given the contradictory contents of the Darkhast and the judgment debtor's statement, issues need to be framed.

03. The Judgment-debtor filed a response at Exhibit-20, contending that the application is false and the prayer in the petition is false. Hence, the present application is not tenable. It is further contended that when a mandatory injunction not granted in the Decree, there is no need to frame any issues. Therefore, it is prayed that the application be rejected.

04. Perused the application and say. Heard Ld. Advocate for Decree-holder and Judgment-debtor .

05. It is observed that the Decree-holder has filed the present petition for execution of the decree passed in RCS No. 35/1995 dated 21.08.2001. The record indicates that, by virtue of the said decree, the defendant is enjoined from disturbing the plaintiff's possession of the suit property. There is no order for mandatory injunction. In the instant petition, the Decree-holder has prayed for the execution of the decree by the demolition of construction made by the Judgment-debtor in the suit property. As per Section 41 (1) of The Code of Civil

Procedure, 1908, all questions arising between the parties relating to the execution, discharge, or satisfaction of the decree shall be determined by the executing Court and not by a separate suit. Considering this, before proceeding further, it would be appropriate to frame issues to ascertain whether the defendant has made construction in the suit property and whether such execution can be granted. The Decree-holder has filed the draft issues at Exhibit-21 as per the directions of this Court, which are as follows :-

- 1) दरखास्तीचा विषय असलेल्या मिळकतीत सामनेवाले यांनी रे.दि.मु.क्र.३५/१९९५ मधील आदेशाचा भंग करून नवीन बांधकाम केले आहे, हे दरखास्तदार सिद्ध करतात काय ?
- 2) दरखास्तदार यांना आज्ञापित आदेशासंदर्भात दरखास्त दाखल करण्याचा अधिकार नाही, असे सामनेवाला सिद्ध करतात काय?
- 3) दावा मिळकतीत सामनेवाले यांचे जुने घर अस्थित्वात आहे व सामनेवाले याने कोणतेही नवीन बांधकाम केलेले नाही असे सामनेवाला सिद्ध करतात काय?
- 4) दावा मिळकतीतील सामनेवाले हा करीत असलेले बांधकाम पाडुन टाकण्यास पात्र आहे काय ?

Considering the draft issues filed by the Court, the said issues appear to be relevant. Hence, it would be appropriate to frame these issues to determine the question between the parties. Accordingly, I proceed to pass the following:

- :: ORDER :: -

- 1) Application is allowed.
- 2) The following issues are hereby framed to determine the real question between the parties.
 - 1) दरखास्तीचा विषय असलेल्या मिळकतीत सामनेवाले यांनी

रे.दि.मु.क्र.३५/१९९५ मधील आदेशाचा भंग करून नवीन बांधकाम केले आहे, हे दरखास्तदार सिद्ध करतात काय ?

- 2) दरखास्तदार यांना आज्ञापीत आदेशासंदर्भात दरखास्त दाखल करण्याचा अधिकार नाही, असे सामनेवाला सिद्ध करतात काय?
- 3) दावा मिळकतीत सामनेवाले यांचे जुने घर अस्थित्वात आहे व सामनेवाले याने कोणतेही नवीन बांधकाम केलेले नाही असे सामनेवाला सिद्ध करतात काय?
- 4) दावा मिळकतीतील सामनेवाले हा करीत असलेले बांधकाम पाडुन टाकण्यास पात्र आहे काय ?

(Dictated and pronounced in open Court.)

Place : Dodamarg.
Date : 08/04/2026.

(Y. P. Bavkar)
Civil Judge (J.D.),
Dodamarg