

**ORDER BELOW EXHIBIT-25**

The Judgment Debtor prayed for dismissal of execution petition. He submitted that the present execution is not maintainable. It is barred by law of limitation. Even the decree is null and void so it cannot be executed. Hence, prayed accordingly. The Decree Holder has filed the say at Exh.30. She submitted that the present execution is not barred by limitation. Right to execute the decree arose when the alleged decree is amended by passing order below Exh.1 in Civil M.A. No.90/2015 by Hon'ble Ad-hoc District Judge-1, Barshi. So there is no substance in the objection taken by Judgment Debtor. Hence, prayed for rejection of the application.

02. Heard both parties at length. Judgment Debtor has relied upon the *ratio* laid down in ***Ganeshmal Pasmal Vs. Nandlal Tulshiram, AIR 1954 Bom. 104*** whereas the Decree Holder has relied upon the *ratio* laid down in ***Laxman Ramji Taske Vs. Kewalabai Kisan Pawade, 2018(2) ALL MR 673*** and ***Akkayanaicker Vs. A.A.A. Kotchadainaidu, AIR 2004 SC 4822***.

03. Judgment Debtor has moved this application on 03 set of grounds. The one ground is that the present execution is

hit by principle of *res-judicata*. However, I am of the opinion that the previous execution petition bearing R.D. No.94/1999 had not been decided on merit but it was only dismissed by My Ld. Predecessor by passing order below Exh.1 on the ground that the execution is not maintainable. The said decree was not duly executed. So there is no substance in the objection that it is hit by principle of *res-judicata*.

04. This Court already decided application Exh.40 in which this Judgment Debtor had taken the objection in respect of nullity of decree. The said objection had been turned down by this Court by passing order below Exh.40 on 20/04/2024.

05. Now the third ground which raised by Judgment Debtor is that original decree had been passed by Hon'ble District Judge, Solapur in R.C.A. No.204/1986 on 25/09/1990. This execution filed in the year 2019 i.e. on 25/02/2019. As per Article 136 of the Limitation Act, there is 12 years period of limitation for execution of any decree when the decree or order becomes enforceable. This decree was become enforceable on 25/09/1990. Decree Holder has not filed execution within 12 years from 25/09/1990. Thus, the decree is hopelessly barred by law of limitation.

06. With the assistance of the learned counsel for both parties, I have sailed in the entire record. In Article 136 of the Limitation Act, the period of limitation for execution of any decree other than a decree granting a mandatory injunction or

order of any Civil Court is 12 years when the decree or order becomes enforceable or where the decree or any subsequent order directs to any payment of money or the delivery of any property to be made at a certain day or at recurring periods, when the default in making the payment or delivery in respect of which execution is sought, takes place.

07. Now question before me is that when the alleged decree becomes enforceable. No doubt, the Hon'ble District Judge, Solapur in R.C.A. No.204/1986 decreed the suit and thereby directed the defendant to give possession of lands bearing block No.593 and 535 of village Javalgaon Tal. Barshi to the plaintiff/appellant. This decree drawn on 25/09/1990. This means this decree becomes enforceable on 25/09/1990. Thereafter, the Decree Holder had filed execution for enforcement of alleged decree vide R.D. No. 94/1999. This execution petition was well within limitation from 25/09/1990. However, Judgment Debtor had moved an objection at Exh.65 in R.D. No.94/1999 and the executing Court passed the order below Exh.65 and on Exh.1 and thereby disposed of the execution petition being not maintainable. It was contention of Judgment Debtor in the said execution that Decree Holder had filed suit for recovery of half portion of block No.593 and 535. However, the Appellant Court granted relief for full share in above said property and thereby directed to hand over the entire possession of block No.593 instead of half share. On the basis of this objection, the previous executing Court dismissed

the execution being not maintainable.

08. Later on, Decree Holder moved an application before the Hon'ble District Judge, Barshi for correction of decree as per section 151 and 152 of the C.P.C. vide Misc.Civil Application No.90/2015. The said application decided on 26/10/2018 and thereby the Hon'ble Ad-hoc District Judge, Barshi corrected the final order of R.C.A. No.204/1986 and thereby directed to Judgment Debtor to give possession of land ad-measuring 01 H 05 R land bearing block No.593 and half share out of 02 H 82 R land bearing block No.535 situated at Village Javalgaon, Tal. Barshi.

09. Previously the Hon'ble District Judge, Solapur in R.C.A. No.204/1986 had directed to give possession of full share of block No.593 and 535. But when suit was instituted, the plaintiff had only claimed half share in block No.535. But the Hon'ble District Court given full share in block No.535 and thereby direction was given to the defendant to hand over the possession of the same. Then in the execution petition, Judgment Debtor pointed out said mistake and accordingly the executing Court dismissed the execution being not maintainable.

10. Thus, when the Hon'ble District Judge corrected the decree in Misc.Civil Application No.90/2015 and thereby given the direction to correct the decree passed in R.C.A. No.204/1986 and when the Decree Holder got corrected decree

on 30/01/2019, this decree becomes enforceable. The mistake was not happened on the part of Decree Holder. But the mistake was happened on the part of the Court while passing decree or while passing judgment in R.C.A. No.204/1986 which corrected by Hon'ble District Court in Misc.Civil Application No.90/2015.

11. This correction was taken place as per section 152 of C.P.C.. Section 152 of C.P.C. has given ample power to the party and to the Court to correct the clerical or arithmetical mistakes in the judgments, decrees or orders or errors arising therein from any accidental slip or omission. The Court can on its own motion amend the judgments, decrees or orders, if clerical or arithmetical mistake or arose in the judgments or decrees. There is no period of limitation given for correction of arithmetical mistake or clerical mistakes. Accordingly, the Decree Holder moved the application for correction of decree and accordingly the Hon'ble District Court corrected the decree. So when the decree was corrected on 30/01/2019, the present decree becomes enforceable or executable.

12. The Judgment Debtor relied upon the *ratio* laid down in ***Ganeshmal Pasmal*** case cited supra. This *ratio* is laid down by the Hon'ble Bombay High Court. However, the Decree Holder has relied upon the *ratio* laid down in ***Akkayanaicker*** case cited supra. In this *ratio* the Hon'ble Supreme Court held that;

“Section 48 of C.P.C. which provided for a limitation of 12 years for the execution of a decree has been replaced by Article 136 of the Act. The words 'when the decree becomes enforceable' which find place in Article 136 were not there in Section 48 of CPC. Because of the change brought about by the legislature the starting point of limitation would be the date on which the decree becomes capable of execution. The amendment carried out in the decree in the present case was substantial and not inconsequential like correction of clerical or arithmetic mistake under Section 152 of CPC. The decretal amount was substantially reduced because of the scaling down of the decree in terms of Act 40 of 1978. A learned Single Judge in *Fatimunnisa Begum Vs. Mohd. Zainulabuddin Saheb*, AIR 1986 AP 355, relying upon the expression in Article 136 of the Act "when the decree becomes enforceable" which is not there in Section 48 of the CPC concluded that the decree which was subjected to an amendment can be enforced only as amended and the period of limitation would start only from the date of the amendment of the decree.”

13. The facts of above said **Akkayanaicker** case are squarely applicable to this case. Though the Judgment Debtor relied upon the *ratio* laid down in **Ganeshmal** case but the law laid down by the Hon'ble Supreme court in **Akkayanaicker** case will be prevailed over the *ratio* of the Hon'ble Bombay High Court. Thus, in view of the guidelines given by the Hon'ble Supreme Court in above said case, the present execution petition is well within limitation as the alleged decree became enforceable on 26/10/2018 when the Hon'ble

District Judge, Barshi corrected the decree.

14. The Hon'ble Supreme Court in ***Pratibha Singh Vs. Shanti Devi Prasad***, AIR 2003 SC 643 observed that;

“When the suit as to immovable property has been decreed and the property is not definitely, the defect in the court record caused by overlooking of provisions contained in O.7, R.3 and O.20, R.3 of the Code is capable of being cured. After all, a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to s.152 or s.47 of the Code, depending on the facts and circumstances of each case which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under s.152 of the Code by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of s.47. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission.”

15. Moreover, in third column of Article 136, it is mentioned that if any subsequent order directs for delivery of any property then from that date the decree becomes enforceable. In this case, after correction, the Hon'ble District Court on 30/01/2019 directed for delivery of possession of alleged property. In view of these facts and circumstances, the

present execution is well within limitation. There is no substance in the objection taken by Judgment Debtor. Hence, application Exh.25 is rejected.

Barshi.
Date : 04/07/2024.

(S.B. Vijaykar)
Jt. Civil Judge (J.D.),Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	Shri.S.R. Barangule
(b)	Court	:	Shri.S.B. Vijaykar, Jt.C.J.J.D.&J.M.F.C. Barshi.
(c)	Judgment /Order declared on	:	04/07/2024
(d)	Judgment /Order signed by P.O. on	:	04/07/2024
(e)	Judgment /Order uploaded on	:	04/07/2024