

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, KARAD
ORDER BELOW EXH.28 IN Spl. Darkhast No.64/2023**

1. Balwant Bapuso Chavan (dead) through LR's ...Applicants/
1A. Shri. Uttam Balwant Chavan & Ors. D.H.

Versus

1. Collector, Satara & Ors. ...Respondents/
J.D.'s

Advocate Mr. S. G. Mane for the applicants/D.H.

Advocate Mr. Sagar Ladda for the respondent/J.D. No.4.

Coram : S. B. Todkar,
C.J.S.D. Karad.
Date : 17/04/2025

ORAL ORDER :

The respondent No.4 has filed present application for dismissal / rejection of application Section 39 Rule 4 of The Code of Civil Procedure, 1908.

02. Perused the application and reply at Exh.29. Heard Ld. Advocate for both side at length. The Ld. advocate for respondent No.4 placed his reliance on following authorities.

a) Mohit Bhargava Vs. Bharat Bhushan Bhargava & Ors., Appeal
(Civil) 2078 of 2007 decided on 20th April, 2007 and submitted that in para No.3 and 6 it were respectively held that,

“The executing Court lacked territorial jurisdiction to continue the execution especially in respect of properties outside its jurisdiction.”

“If the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing Court, nothing in Section 39 of the Code shall be deemed to authorize the Court to proceed with the execution.”

b) **Union of India & Ors. Vs. M.K.Sarkar**, (2010)2 Supreme Court Cases 59, wherein in paragraph No.25 and 26 respectively it is observed by Hon'ble Apex Court that,

“There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as precedent for claiming similar benefit by others. This Court in a series of decision has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of Courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others.”

“A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a Court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the Court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

c) **Topanmal Chhotamal Vs. Kundomal Gangaram and others** 1959 SCC Online SC 22 and placed his reliance on paragraph No.12 wherein Hon'ble Apex Court it is held tha,

“The question is whether in such circumstances, an executing Court can go behind decree and give the relief to the appellant which was expressly denied to him in the suit. The question so posed can only have one answer. It is a

well settled principle that a Court executing a decree cannot go behind the decree; it must take the decree as it stands, or the decree is binding and conclusive between the parties to the suit. If the contention of the appellant were to be accepted, it would contravene the said principle; for, while the decree as construed by us, has directed that it should not be executed against the personal properties of the partners, the executing Court would be directing execution against the said partners. While the decree executed personal liability the executing Court would be imposing the same. This cannot obviously be done.”

03. In reply to these decisions the Ld. Advocate for the applicant's side submitted that the facts in the relied decisions, issues involved of the relied decisions and present matter in hand are totally distinct and therefore, the cited decisions are of no help to the respondent No.4.

04. Considering the rival contentions in the application and reply, following points arises for my determination, to which I have recorded my findings with reasons thereon as under :

Points :

Findings :

- | | |
|---|-------------------------|
| 1. Whether application is liable to be rejected / dismissed ? | ... In the negative. |
| 2. What order ? | ... As per final order. |

REASONS

As to Points No.1 & 2 :

05. It is the contentions of the respondent No.4 in the present application that, National Highway Authority of India is not a party to the present case in hand. Indian National Highway Corporation has been made a party in the present matter. According to respondent No.4 the captioned petition is prima facie not maintainable for want of territorial jurisdiction. That admittedly, the J.D.'s resides outside the jurisdiction of this Court. The properties of J.D.'s too are not situated

within the local limits of this Court. On the basis of this contentions he submitted that execution petition filed before this Court is without jurisdiction and as such is not maintainable and accordingly deserves to be dismissed.

06. It is the contentions of the D.H. that, block Nos. 1134 and 1133 of village Varunji, Tal. Karad, Dist. Satara of the claimants / applicants acquired by National Highway Authority i.e. J.D.No.4 for the extension of road. For the enhancement of compensation amount applicants had filed L.A.R. No.6/2007 against the J.D., which was allowed on 14/08/2023. As the J.D. failed to pay the amount of enhancement as per order and judgment dt.14/08/2023 they have preferred present darkhast against the J.D. The applicants have made four persons/ authorities as per the original L.A.R. as parties in the present darkhast application. They have not filed any objection about the jurisdiction in their say to the darkhast application. But, third party has filed present application which is not acceptable one. Third party has no locus-standi to file such type of application therefore, it is liable to be rejected.

07. It is the further contentions of applicant's/ D.H.'s that the land acquired is situated within the jurisdiction of this Court. The offices of J.D.Nos.1 and 2 are also situated within the jurisdiction of this Court. J.D.No.1 and 2 acquired the lands of claimants with the help of J.D.Nos.3 and 4. Therefore, the applicants have demanded amount of enhancement / award from J.D.'s jointly and severally. The applicants have right to claim amount as per the award. After service of notice J.D.'s appeared before Court and filed necessary applications for grant of amount of award from the Government. As their legal advisor has not given opinion within time matter is lingering. By taking undue

advantage of the procedure J.D.'s are trying to prolong the matter therefore, applicants have prayed for rejection of the application with cost.

08. This is an application filed by the respondent No.4 for rejection/ dismissal of application under Section 39 Rule 4 of the Code of Civil Procedure, 1908. Therefore, I would like to reproduce the said provision before discussing the factual aspects. It runs as :-

Section 39 **Transfer of Decree** – (1) The Court

(a) ..., (b)...., (d)...., (2) The Court (3) For the purpose ...

(4) Nothing in this Section shall be deemed to authorize the Court which pass a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

09. On careful perusal of the above provision, it is clear that a new sub Section (4) has been added by the amendment Act 2002, which is also clarifactory in nature and clarifies that nothing in Section 39 shall be deemed to authorize any Court which passed the decree to execute such decree against any person or property outside the local limits of its jurisdiction.

10. I have gone through the entire contents of execution application. It appears from record that, it is an admitted fact on record that, the decree holders have filed the present darkhast before this Court for execution of the award passed by the SDO vide letter dt.16/01/2024 in accordance with the judgment and order dt.14/08/2023 by CJSD, Karad in LAR No.6/2007. After service of notice of the darkhast application respondent No.4 appeared before Court on 08/02/2024 by filing V.P of its advocate at Exh.12, on behalf of respondent Nos.1 and 2 Ld. AGP filed pursis below Exh.17 and shown readiness to conduct the proceeding. The D.H. have filed

application below Exh.20 for attachment of property for the recovery of execution amount. To this application on behalf of respondent No.4 its Ld. advocate filed handwritten say on the application overleaf itself and submitted that J.D.No.4 is ready to deposit amount, for the purpose some technicaly and administrative compliance is going on at higher level authorities. J.D.No.4 is trying to sanction the amount from the National Highways Authority of India, Bombay, which is at final stage and seek adjournment. Thereafter, by filing an application below Exh.21,22 and 25 respondent No.4 sought adjournments for deposit of amount and suddenly by changing their advocate respondent No.4 has filed an application below Exh.28 for dismissal of the whole execution proceeding.

11. I have gone through the title cause of the darkhast application and award passed by CJSD, Karad in L.A.R. No.6/2007 on 14/08/2023. It appears that, applicants have made four persons/ officers/ authorities as J.D.'s /respondents in the present darkhast application. Out of these four J.D.'s three J.D.'s are similar as per award dt.14/08/2023. In the award Indian National Highway Corporation (Transport, Road Transport and State Highway Ministry, Government of India), S.No.134/1, Bayak Bhavan Campus, Dr. Manibhai Desai Nagar, Warje, Pune 411 058, Maharashtra State was shown as respondent No.4. But, in the present execution application applicants have made भारतीय राष्ट्रीय राजमार्ग प्राधिकरण (पोत परिवहन, सडक परिवहन और राज्यमार्ग मंत्रालय, भारत सरकार) स.नं.१३४/१, बायक भवन कॅम्पस, डॉ. मणीभाई देसाईनगर, वारजे, पुणे ४११ ०५८, महाराष्ट्र राज्य) as a respondent No.4. From the comparison of respondent No.4 in the main award and in the present darkhast application it clearly appears that applicants have mentioned the name of respondent No.4 as authority instead of corporation.

12. I have gone through the award passed by C.J.S.D. Karad in L.A.R. No.6/2007. From the title cause of the award and execution application it appears that respondent Nos.1 and 2 are having their offices within the jurisdiction of this Court. It also appears from record that lands bearing block Nos.1134 and 1133 at village Varunji, Tal. Karad, Dist. Satara, which are acquired by Government for the construction of four way track of National Highway No.4 are also situated within the jurisdiction of this Court. The respondents have neither raised objection regarding territorial jurisdiction in the original L.A.R. nor in the present execution application by filing their say at appropriate places and time. After the lapse of considerable time at belated stage the respondent No.4 has filed present application. It clears from Section 39 Rule 4 that nothing shall be deemed to authorize the Court which pass a decree to execute such decree against any person or property outside the local limits of its jurisdiction. In the present matter in hand award passed against four respondents, out of which offices of two respondents and the property acquired by the Government is situated within the jurisdiction of this Court therefore, this Court is of the opinion that this Court has jurisdiction to try and entertain the present application. At the most it is necessary for the applicants to take note of incorrect nomenclature of the respondent No.4 for necessary action.

13. After perusal of entire averments made in the execution application it appears that it is not found that the execution application is barred by any territorial jurisdiction. The respondent No.4 has not shown that the execution application appears from the statement in the execution application to be barred by territorial jurisdiction. Therefore, I do not find any substance in the argument advanced by the Ld.

Advocate for respondent No.4 that execution application is barred by territorial jurisdiction and therefore it is liable to be rejected. Considering the above facts and circumstances, quoted provisions, and relied citations, I hold that the application for rejection of execution application is liable to be rejected. It cannot be said that the execution application from the averments made in the execution application is territorial jurisdiction. It appears from the pleadings of the execution application that, it does not disclose it is barred by territorial jurisdiction. I hold that the application for dismissal/ rejection of application is devoid of any merit. In the result, I answer point No.1 in the negative and in answer to point No.2, I proceed to pass the following order.

ORDER

The application below Exh.28 for dismissal/ rejection of execution application under Section 39 Rule 4 of Code of Civil Procedure, 1908 is hereby rejected with cost.

[S. B. Todkar]

Date : 17/04/2025.

Civil Judge Sr. Division, Karad.