

**Order below Exh.13 in Reg. Dkst. No. 28/2024**

This is an application filed by the decree holder to issue the possession warrant.

2. The D.H. submitted that, no one appeal is pending against decree passed in R.C.S.No.150/2019. Even decree passed in R.C.S.No.150/2019 is not stayed by any Hon'ble Appellate Court. As yet, decree holder has not got fruits of decree. Notices were duly served to the judgment debtors. Judgment debtors are appeared in execution proceeding. However, they failed to file their say in execution proceeding and present application. Hence, execution proceeding is proceeded without their say. Judgment debtors are willfully avoiding to hand over possession of suit property. Hence, prays to issue possession warrant.

3. Ld.Advocate Shri. S.R.Gadhawe for judgment debtors is present. J.D. are absent when called out repeatedly. Ld.Advocate Shri. S.R.Gadhawe has filed no instruction pursis vide Exh.14. No an adjournment application is filed on record. Hence this application is proceeded without say against judgment debtors.

4. Heard Ld. Advocate Shri. J. S. Kapre for the D.H. Ld. Advocate Shri. J.S.Kapre submitted argument in consonance with contentions in execution proceeding and present application. Ld. Advocate for Judgment debtors has not made argument, hence application is proceeded without argument of judgment debtors.

5. Before dealing this application, at the outset it needs to be mentioned here that, there is no existence of stay order to the present execution proceeding. R.C.S.No.150/2019 is partly decreed on 16.03.2024 and defendant/judgment debtor Nos.2 and 3 are directed by court to deliver possession of suit property to plaintiff. Law is well settled that, an executing court cannot go behind the decree but must execute it as it stands. As the execution proceeding is relating with the recovery of possession of suit property, it needs to deliver the possession of suit property to decree holder as claimed. Hence, it would be justifiable to issue possession warrant against judgment debtor Nos.2 and 3 in view of order 21 rule 35 of Code of Criminal Procedure as per decree passed in R.C.S.No.150/2019. In the result I proceed to pass following order

**ORDER**

1. Application vide Exh.13 is allowed.
2. Issue possession warrant against defendant/judgment debtor Nos.2 and 3.
3. The concerned bailiff to file report after delivering the possession of suit property to plaintiff.
4. No order as to cost.

(S.R.Shinde)  
Jt. Civil Judge, Junior Division,  
Wai.

Date: 04/02/2026.