

MHNG020052052010

**ORDER BELOW EXH.152**

The present application is filed by Judgment Debtor No.1 under Order XL Rule 1 read with Section 151 of the Code of Civil Procedure, 1908, seeking the appointment of a nationalised bank as Receiver in respect of the property known as "Gokhale House", allegedly to facilitate its private sale in terms of the compromise decree.

2] The Judgment Debtor No.1 has contended that the execution proceedings have been pending for a considerable period and that the prayer for the appointment of a Receiver is intended to facilitate the private sale of the Gokhale House. It is submitted that the decree contemplated the private sale of the property and that the Judgment Debtors have been unable to complete the transaction due to alleged disputes regarding possession, discrepancies in the city survey record, and alleged obstruction by the Decree Holder in permitting prospective purchasers to inspect the property.

3] It is further contended that earlier applications for attachment and public auction of the Gokhale House have already been dealt with by this Court. Reliance is placed particularly on the order below Exh.144, which did not accept the prayer for public auction and treated private sale as the permissible mode. According to the Judgment Debtor, the appointment of a neutral nationalised bank as Receiver is therefore necessary to facilitate the private sale and bring the long-pending execution to an end.

4] The application is strongly opposed by the Decree Holder. Learned Advocate for the Decree Holder stated that the application is not maintainable in its present form and that the Judgment Debtors have not approached the Court with clean hands. It is submitted that the Judgment Debtors have failed to comply with the terms of the compromise decree and have filed successive applications solely to prolong the execution proceedings.

5] The Learned Advocate for the Decree Holder further submitted that the compromise decree contains no provision for the appointment of a Receiver and that the present application seeks to introduce a new mechanism not contemplated by the decree. It is also submitted that the earlier orders passed below, Exhs. 61, 72, 105 and 144, have attained finality and cannot be indirectly reopened through the present application.

6] It is further contended that the allegations of obstruction to prospective purchasers are unsupported by any reliable material. No bona fide prospective purchaser has been examined or brought before the Court to establish that the Decree Holder prevented inspection or obstructed the proposed private sale. Accordingly, the Decree Holder has prayed for rejection of the application.

7] The Decree Holder has also filed a pursuance/clarification regarding certain expressions appearing in the reply to Exh.152. It is submitted that the expression concerning the alleged illegality of the Decree Holder's possession of the Gokhale House was inadvertently or incorrectly incorporated in the reply and that it should not be treated as an admission. The said pursuance is taken on record.

8] I have heard the learned Advocates for the parties. I have carefully gone through the application at Exh.152, the reply thereto, the previous orders passed in the execution proceedings, and the material available on record.

9] At the outset, it is necessary to bear in mind the jurisdiction of the Executing Court. Section 51 of the Code provides various modes by which a decree may be executed, including the appointment of a Receiver under clause (d). Order XL Rule 1 CPC empowers the Court to appoint a Receiver where it appears to be just and convenient. However, this power is discretionary and must be exercised for the purpose of effectively executing or protecting the subject matter of the decree. It cannot be exercised so as to alter the substantive rights of the parties under the decree.

10] In the present case, the decree sought to be executed is a compromise decree. Therefore, the rights and obligations of the parties must be determined primarily from the terms of the compromise, which form part of the decree. The Executing Court cannot go beyond the terms of the decree or create a new substantive obligation or right under the guise of adopting a mode of execution.

11] It is not in dispute that this Court has already passed various orders in the present execution proceedings. The order below Exh.144 has specifically dealt with the prayer concerning the Gokhale House and the manner in which the property could be dealt with. The Judgment Debtor has not demonstrated any subsequent circumstance or legal basis that would justify reopening or substantially altering the effect of the said order.

12] The application at Exh.152, although presented as a request for the appointment of a Receiver, mainly aims to gain control over Gokhale House via a third party, effectively changing the current arrangements regarding possession and management of the property. Such relief cannot be awarded simply because the execution has been delayed for a significant time.

13] The mere pendency of execution for several years cannot, by itself, constitute sufficient ground for appointing a Receiver. Appointment of a Receiver is an extraordinary and discretionary relief. The applicant is required to establish circumstances showing that such appointment is necessary for the protection of the property or for the effective execution of the decree. In the present case, no such necessity has been satisfactorily established.

14] The principal ground urged by the Judgment Debtor is that the appointment of a Receiver would facilitate the private sale of the Gokhale House. However, the applicant has not demonstrated why the private sale cannot be undertaken in accordance with the existing terms of the compromise decree without appointing a Receiver.

15] The Judgment Debtor has also alleged that the Decree Holder is obstructing prospective purchasers from inspecting the property. However, except for the assertions made in the application, no cogent material has been placed on record to establish that a bona fide prospective purchaser was prevented by the Decree Holder from inspecting the property, or that any concluded transaction failed solely on account of such alleged obstruction.

16] The executing Court cannot proceed on the basis of

apprehensions or allegations that have not been established by material on record. If, at any subsequent stage, there is a specific and demonstrable obstruction to the execution of the decree, the concerned party is at liberty to take appropriate proceedings in accordance with law. Such possibility, however, cannot justify the appointment of a Receiver in the present facts.

17] Another important aspect is that the Judgment Debtor has raised allegations of discrepancies between the city survey record and the area of the Gokhale House. The Judgment Debtor has relied on certain documents and contended that the property card shows an area different from that mentioned in the sale deed. Any such discrepancies, if any, may require appropriate proceedings before the competent revenue or registration authority. They cannot be adjudicated upon in the present application for the appointment of a Receiver.

18] The Executing Court is required to execute the decree as it stands. It cannot undertake adjudication on the rectification of revenue or city survey records, title, encroachment, or other substantive disputes that fall outside the scope of the decree.

19] Similarly, the contention that the Decree Holder's possession of the Gokhale House is illegal cannot be accepted or adjudicated upon in the present application. The present proceedings are not intended to determine an independent dispute regarding title or possession. More particularly, the applicant cannot obtain, indirectly through the appointment of a Receiver, relief from dispossession that is not expressly granted by the decree.

20] Order XL Rule 1(2) CPC itself places a limitation on the Court's power to remove a person from possession or custody of property where that person does not have a present right to be removed. Thus, the appointment of a Receiver cannot be used as an indirect means of obtaining possession when the decree does not expressly provide for such relief.

21] The Judgment Debtor's contention that the appointment of a Receiver is the "last resort" also does not persuade this Court. The statutory power to appoint a Receiver is discretionary. The fact that other methods may have proved inconvenient or that execution has taken considerable time does not automatically make the appointment of a Receiver just and convenient.

22] The record further indicates that the Judgment Debtors have raised various objections at different stages of the execution proceedings regarding payment of the decretal amount, interest, possession, and the mode of sale. Those matters have already been considered in the orders passed from time to time. The present application cannot be permitted to reopen issues already decided or to introduce a new mode of execution inconsistent with the earlier orders.

23] The submission of the Decree Holder that the Judgment Debtors have not complied with their obligations under the compromise decree also assumes significance. A party seeking equitable and discretionary relief, such as the appointment of a Receiver, must establish a genuine necessity for such relief. In the present case, the applicant has failed to demonstrate such necessity by cogent material.

24] The Court is also unable to accept the contention that the appointment of a Receiver is necessary merely because the private sale has not taken place. The compromise decree itself governs the rights and obligations of the parties. The executing Court cannot, under the guise of facilitating the decree, rewrite the compromise or create a mechanism that substantially alters the rights of either party.

25] The prayer for appointment of a nationalised bank as Receiver is, therefore, found unnecessary and unjustified in the facts and circumstances of the present execution proceedings. The applicant has failed to establish that the requirements of Order XL Rule 1 CPC are met.

26] It is clarified that this Court has not expressed any final opinion on the legality or otherwise of the Decree Holder's possession of the Gokhale House, the alleged encroachments, the alleged discrepancies in the city survey record, or any independent claim of title or possession. Those matters, to the extent legally maintainable, are to be dealt with in appropriate proceedings.

27] Likewise, the present order shall not be construed as preventing either party from seeking any appropriate relief, strictly in accordance with the terms of the compromise decree and the provisions of law, if any subsequent event gives rise to a legally sustainable cause for such relief.

28] In view of the above discussion, this Court finds that the Judgment Debtor has failed to establish any sufficient ground for the appointment of a Receiver. The application is therefore liable to be

rejected.

ORDER

1. The application at Exh.152 is hereby rejected.
2. No order as to costs.

Place:-Nagpur

(M.S.Todkar)

Date : 13/08/2026.

2nd Joint Civil Judge Sr. Dn.,Nagpur.