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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 2159 OF 2015  
WITH  
CIVIL APPLICATION NO. 453 OF 2019**

Mapro Construction Pvt. Ltd. ... Petitioners  
through its Directors

Vs.

Shri Namdeo Swar Patil and Others ... Respondents

Mr. Ajay Subhash Patil for the Petitioner.

Mr. Sarfaraj J. Shaikh i/b. Mr. Sanjay Patil for Respondent  
No. 5.4 and 5.5.

Mr. Suraj N. Naik i/b. Mr. R. D. Suryawanshi for Respondent  
No. 6.

**CORAM : GAURI GODSE, J.**

**DATE : 30<sup>th</sup> APRIL 2026**

**ORDER :**

1. This petition is taken up for final disposal as per the earlier order. This petition is filed by the decree holder challenging the order passed by the trial court framing issues in an application filed by the judgment debtor no. 6 under Section 47 of the Code of Civil Procedure, 1908 ("CPC"). The learned judge has relied upon Order XXI Rule 58(2) of the CPC and framed issues.

2. Learned counsel for the petitioners submits that judgment debtor no. 6, who is defendant no. 6, had admitted the suit claim by filing a written statement. The suit was decreed on 2<sup>nd</sup> May 2008 for specific performance of the contract in favour of the petitioners. He submits that, only to stall execution of the decree, the application was filed, which has no merit. He submits that any objection filed under Section 47 has to be decided by the executing court within the limited scope under Section 47. The executing court cannot go beyond the decree while deciding the application under Section 47. He submits that even otherwise, the judgment debtor no.6 would not be entitled to raise any objection when she had admitted the suit claim.

3. Learned counsel appearing for the judgment debtor no. 6 submits that since the issue is regarding the contravention of the provisions under the Bombay Tenancy and Agricultural Land Act, 1948 and the issue regarding coparcenary rights, the executing court can decide the objection raised on behalf of the judgment debtor no. 6.

4. I have perused the papers of the petition. The decree under execution is dated 2<sup>nd</sup> May 2008 in a suit filed in 1995,

granting specific performance of an agreement. There is no dispute that the judgment debtor no. 6 had filed a written statement along with defendant nos. 3 and 5 admitting the suit claim. A perusal of the judgment and decree, which is under execution, also refers to the compromise terms signed by judgment debtor no. 6. The issue regarding tenancy, as raised in the present application, is also considered by the trial court, which is clearly seen from the judgment and decree under execution.

5. Once judgment debtor no. 6, who is defendant no. 6, has admitted the suit claim, it is clear that the application under Exhibit 31 raising objection to the executability of the decree is filed with malafide intention to stall the decree under execution. It is a well-established legal principle that the executing court, while deciding the objection under Section 47 of the CPC, cannot go beyond the decree. Hence, there was no reason for the learned Judge to frame issues. The learned Judge should have first dealt with the maintainability of the application in view of the suit claim admitted by judgment debtor no. 6.

6. I find it necessary to also record an important aspect of

the matter where an appeal is filed by some other defendants challenging the decree under execution, in which the decree was stayed by the district court in its entirety. Hence, in view of the grievance made on behalf of the petitioner, the following order was passed on 25<sup>th</sup> March 2026:

*“1. Learned counsel for the heirs and legal representatives of deceased respondent no.6 submits that respondent nos. 5.4 and 5.5 have filed the first appeal in the district court in the year 2024 alongwith the application for the condonation of delay. He submits that in the said application, the district court has granted stay to the execution of the decree till further orders. Order dated 17<sup>th</sup> February 2026 is tendered and is taken on record.*

*2. The order impugned in this writ petition is passed by the executing court framing issues in an application filed by deceased respondent no.6 under Section 47 of the Civil Procedure Code, 1908 (“CPC”). The heirs and legal representatives of respondent no.6 have not challenged the decree for specific performance in favour of the petitioner. This court vide order dated 28<sup>th</sup> July 2016 issued a notice to respondent no.6, as the impugned order is passed on an application filed by respondent no.6.*

*3. The writ petition needs to be decided finally at the admission stage.*

*4. Learned counsel appearing for the heirs and legal representatives of deceased respondent no.6 waives notice for final disposal of the writ petition.*

*5. When the decree under execution is challenged only by respondent nos. 5.4 and 5.5 there would not be any question of staying the decree against all the judgment debtors. Learned counsel for the petitioner, therefore, seeks liberty to apply before the district court for vacating the order of stay, so far as the remaining judgment debtors are concerned.*

*6. The petitioner is at liberty to make an appropriate application in Miscellaneous Application no. 17 of 2024 seeking vacation of the ex-parte order of stay to the decree under execution.*

*7. If such an application is filed, the concerned district court is bound to decide the same in accordance with law and taking into consideration the pendency of this writ petition and the orders passed in the present writ petition.*

*8. List the writ petition for final disposal at the admission stage on 23<sup>rd</sup> April 2026."*

7. Considering the aforesaid facts and circumstances, I have no manner of doubt that attempts have been made to stall execution of the decree in favour of the petitioners. The reference to the Order XXI Rule 58(2) of the CPC in the impugned order is irrelevant for deciding the objections filed

under Section 47 of the CPC. The learned judge has not even bothered to consider that the judgment debtor who filed an application under Section 47 of the CPC has admitted the suit claim. In such circumstances, it was expected of the learned Judge of the executing court to decide the application filed by the judgment debtor no. 6 on its own merits and to consider the non-maintainability of such application in view of the suit claim admitted by the judgment debtor.

8. This is, therefore, a fit case to exercise writ jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order. The writ petition is allowed by passing the following order :

- (i) The impugned order dated 10<sup>th</sup> October 2014, passed by the 3<sup>rd</sup> Joint Civil Judge, Senior Division, Thane, below Exhibit 31 in Special Darkhast No. 3 of 2012, is quashed and set aside.
- (ii) The learned Judge shall decide the application at Exhibit-31 on its own merits, considering the scope of Section 47 of the CPC under which the application is filed.
- (iii) The learned Judge shall decide the application by

considering that the judgment debtor no. 6 had admitted the suit claim.

- (iv) The concerned Judge before whom the Special Darkhast No. 3 of 2012 is pending shall decide the application at Exhibit-31, and the said Darkhast proceedings as expeditiously as possible.
- (v) It is clarified that unnecessary adjournments shall not be granted, and the concerned Judge shall endeavour to decide the Darkhast proceeding expeditiously.
- (vi) The writ petition is allowed in the aforesaid terms.
- (vii) In view of the disposal of the writ petition, the pending civil application/interim application is disposed of as infructuous.

**[GAURI GODSE, J.]**