

(2025) 04 BOM CK 0287

In the Bombay High Court

Case No : Writ Petition No. 11397 Of 2019

Vishrut Enterprises Pvt. Ltd. (Formerly Known As M/S.
Vishrut Infotech Pvt. Ltd.)

APPELLANT

Vs

Shri. Prakash Ganpat Thakur And Ors

RESPONDENT

Date of Decision : 17-04-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure 1908 — Section 47, Order 21 Rule 35, Order 21 Rule 97, Order 21 Rule 97(1), Order 21 Rule 98, Order 21 Rule 99, Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 103, Order 21 Rule 104, Order 21 Rule 105, Order 21 Rule 106

Citation : (2025) 04 BOM CK 0287

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : Prasad Dani, Nishant Tripathi, Pranay Vaidya, B.M. Tripathi & Co, Rohit Sakhadeo, R.D. Soni, Uma Sharma Dharam & Co,

Final Decision : Dismissed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith and with the consent of the learned counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioners-decree holders take exception to an order passed by the executing Court on 19th March 2019 whereby the executing Court entertained the Application of Respondent Nos. 4 to 15 and directed that the issue of resistance and executability of the decree passed in SCS No.747 of 2007 be adjudicated.

3. Shorn of unnecessary details, the background facts leading to this Petition can be stated in brief as under:

2.1 Mahadeo Alias Mahadu Changu Tandel was the holder of agricultural land

bearing Survey No. 55, Hissa No. 8 situated at village Gavhan. The said land was acquired by Cidco-Respondent No.3, a New Town Development Authority for the purpose of the development of New Mumbai. An award was passed. Under the scheme, known as 12.5% scheme, the agriculturists whose lands were acquired were entitled to allotment of a developed plot by Cidco.

2.2 Respondent Nos. 1 and 2-the judgment debtors claimed themselves to be the successor interest of Mahadeo Tandel. Respondent Nos. 1 and 2 along with their mother Namubai Ganpat Thakur, entered into an Agreement to Sell with respect to their right, title and interest in the developed plot, admeasuring 950 square meter, which was to be allotted at Ulwe, Taluka Panvel, District Raigad, for a consideration of Rs. 28,50,000/- in favour of the Petitioner. An Agreement of Assignment dated 28th July 2007 came to be executed between the Petitioners and Respondent Nos. 1 and 2. Part consideration was paid.

2.3 Asserting that Respondent Nos. 1 and 2 committed default in performance of their part of contract to sell the said plot, the Petitioner instituted a Suit for specific performance of the contract, inter alia, seeking an order against the Defendants to execute the Deed of Transfer in favour of the Plaintiff.

2.4 The suit proceeded ex parte against Defendant Nos. 1 and 2. Respondent No.3-Cidco contested the suit.

2.5 By judgment and order dated 3rd November 2016, the learned Civil Judge, Senior Division, Panvel, was persuaded to decree the Suit and direct the Defendant to perform the obligations under the contract and execute Deed of Transfer in favour of the Plaintiff upon deposit of the entire consideration.

2.6 The Petitioner filed a Petition for execution of the said decree, namely, Special Darkhast No. 20 of 2017. A Court Commissioner was appointed to execute the instrument in favour of the Petitioner. As there was obstruction in the execution of the decree, the Court Commissioner submitted a report to the Court.

2.7 On 6th October 2018, the Respondent Nos. 4 to 19 appeared before the executing Court and filed an Application purportedly under Section 47 of the Code of Civil Procedure 1908 ("the Code") and sought the dismissal of the Execution Petition on the premise that the decree was not executable. The substance of the resistance put forth by Respondent Nos. 4 to 19 was that the Respondent Nos. 1 and 2/Defendant Nos. 1 and 2 had falsely claimed that they were the successor in interest of Mahadu Tandel. Respondent Nos. 1 and 2 were not the legal heirs of late Mahadu Tandel. The Respondent Nos. 4 to 19 were the legal heirs of late Mahadu Tandel. Respondent Nos.1 and 2 had fraudulently obtained a heirship certificate dated 2nd September 1995 in CMA No. 226 of 1995. Respondent Nos. 4 to 19 thus filed an Application for cancellation of the said heirship certificate and by an order dated dated 13th July 2018 passed in Civil Enquiry Application No. 511 of 2011, the said heirship certificate came to be revoked. Conversely, by an order dated 29th January 2009 in CMA No.881 of 2008, heirship certificate came to be granted to Respondent Nos. 4 to 19.

Therefore, the decree which has been put to execution is a nullity and obtained by practicing fraud.

2.8 The Petitioner resisted the Application.

2.9 By the impugned order, the learned Civil Judge, Panvel, was persuaded to entertain the resistance on behalf of Respondent Nos. 4 to 19 and direct that the issue of resistance and executability of the decree be adjudicated. The learned Civil Judge was of the view that though the Respondent Nos. 4 to 19, were not parties to the proceeding and thus could not have invoked the provisions contained in Section 47 of the Code, yet, the resistance put forth by Respondent Nos. 4 to 19 was required to be adjudicated under the provisions of Order XXI Rule 97 of the Code.

2.10 Being aggrieved, the Petitioners-Decree Holders have invoked the writ jurisdiction.

4. I have heard Mr. Prasad Dani, the learned Senior Advocate, for the Petitioners and Mr. Rohit Sakhadeo, the learned Counsel for Respondent No.3-Cidco and Mr. R.D. Soni, the learned Counsel for Respondent Nos. 4 to 12, 13, 15 to 19. The learned Counsel took the Court through the pleadings and material on record.

5. Mr. Dani, the learned Senior Advocate for the Petitioner, submitted that though the learned Civil Judge, has explicitly recorded that the provisions contained in Section 47 of the Code, under which the Application was purportedly filed, had no application, yet, the learned Civil Judge proceeded to pass the impugned order to decide the issues of resistance and executability of the decree. Mr. Dani would urge that the learned Civil Judge was in error in holding that the alleged purported resistance sought to be put forth by Respondent Nos. 4 to 19 can be considered to be one under the provisions of Order XXI Rule 97 of the Code. It was submitted that in the process, the learned Civil Judge lost sight of the nature of the decree. What the judgment debtors are required to do under the decree in question is to transfer the subject plot to the Petitioners. It is not the case of the Respondent Nos. 4 to 19 that they have been put in possession of the subject plot and they offered the resistance when they were sought to be dispossessed. Therefore, the provisions contained in Order XXI Rule 97 are also inapplicable to the facts of the case at hand.

6. In opposition to this, Mr Sakhadeo, the learned Counsel for Respondent No.3-Cidco submitted that the decree is in teeth of the Land Disposal Rules in accordance with which Cidco is required to transfer the developed plots to the agriculturist whose lands have been acquired. The execution of the decree has the propensity to adversely affect the statutory functions of Cidco. There was no privity of contract between Respondent No. 3 -Cidco and the Petitioners. Thus, the Trial Court could not have directed the execution of the Transfer Deed by Cidco (R3). Therefore, the Respondent No.3 supports the impugned order, urged Mr. Sakhadeo.

7. Mr. Soni, the learned Counsel for Respondent Nos. 4 to 19, resisted the submissions on behalf of the Petitioners. It was submitted that the judgment debtors had no right, title and interest in the developed plot which was to be allotted by way of compensation for the acquisition of the land of late Mahadu Tandel. The award was passed in the name of Mahadu Tandel and Joma Mahadeo Tandel. Respondent Nos. 1 and 2-Defendant Nos. 1 and 2 had no concern with Mahadu Tandel. In such circumstances, Respondent Nos. 1 and 2-Defendant Nos. 1 and 2 could not have agreed to transfer the plot to be allotted in lieu of the acquisition of land.

8. Attention of the Court was invited to the award (Exhibit "C" to the Affidavit in Reply) which indicates that the award was passed in favour of Mahadu and Joma. Since a clear case of fraud and the decree being nullity was made out, the learned Civil Judge was justified in holding that the resistance of Defendant Nos. 4 to 19 was required to be adjudicated under the provisions of Order XXI Rule 97 of the code. Mr. Soni submitted that under the provisions of Order XXI Rule 97, any person was entitled to offer resistance to the execution of the decree. Respondent Nos. 4 to 19 are claiming an independent right and thus the issue of executability of the decree was required to be decided by the executing Court only. To buttress this submission, Mr. Soni placed reliance on the judgment of the Supreme Court in the case of Brahmdeo Choudhary Vs Rishikesh Prasad Jaiswal & Anr. 1997 (3) SCC 694

9. I have given anxious consideration to the rival submissions. Evidently, Respondent Nos. 4 to 19 were not parties to the Suit in which the decree came to be passed. Nor Respondent Nos. 4 to 19 are claiming through the parties to the Suit. On the contrary, the Respondent Nos. 4 to 19 are asserting their independent right, title and interest in the suit property.

10. In view of the aforesaid rather incontrovertible position, the submission of Mr. Dani that Section 47 of the Code which mandates that all question relating to the execution or satisfaction of the decree shall be determined by the executing Court, was not attracted to the facts of the case, appears sustainable.

11. The learned Civil Judge also recorded in clear terms that as Defendant Nos. 4 to 19 were not parties to the Suit, there was no occasion to resort to Section 47 of the Code. The learned Civil Judge was, however, of the view that notwithstanding the incorrect nomenclature of the Application, the Court was required to consider resistance to the execution of the decree and, thus, the objection could be considered to be one under the provisions of Order XXI Rule 97 of the Code.

12. Whether the aforesaid approach of the learned Civil Judge is justifiable?

13. Order XXI of the Code which regulates the procedure of the execution of the decrees, contains a fasciculous of provisions and is construed to be a Code in itself. Rule 97 to 106 of the Code contain the provisions under the caption of "Resistance to delivery of possession to decree holder or purchaser". Order XXI

Rule 97 with which we are primarily concerned reads as under:

"97. Resistance or obstruction to possession of immovable property.— (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

14. The text of Rule 97, on its plain reading, indicates that where the holders of a decree or purchaser of any property sold in execution of the decree is resisted or obstructed by any person in obtaining possession of property, he can complain of the resistance or obstruction and there-upon the Court shall proceed to adjudicate such resistance or obstruction. Rule 99, of Order XXI, on the other hand, enables any person other than the judgment debtor, who claims to be dispossessed by decree holder or by the purchaser of the property in execution of the decree, to make an application to the Court complaining of such dispossession. It is imperative to note that Rule 101 of Order XXI, inter alia, provides that all questions including questions relating to right, title and interest in the property arising between the parties to a proceeding under Rule 97 or Rule 99, shall be determined by the Court dealing with application, and not by a separate Suit.

15. A profitable reference, in this context, can be made to the decision of the Supreme Court in the case of Bhanwar Lal Vs Satyanarain & Anr 1995 (1) SCC 6 wherein the legal position as regards the resistance to the execution under Order XXI Rule 97 was expounded as under:

"5. The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. A reading of order 21, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

6. When the appellant had made the application on 25-5- 1979 against Satyanarain, in law it must be only the application made under Order 21, Rule

97(1) of CPC. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost."

16. In the case of Brahmdeo Choudhary(Supra) the Supreme Court after following the previous pronouncement in the case of Bhanwar Lal (Supra) enunciated that the provisions of Order XXI lay down a complete Code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re- issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99 CPC and pray for restoration of possession.

17. The aforesaid position was re-emphasized by the Supreme Court in the case of Ved Kumari (Dead Through Her Legal Representative) Dr Vijay Agarwal Vs Municipal Corporation of Delhi Through Its Commissioner. 2023 (13) SCC 651.

18. In the case of Sriram Housing Fiance & Investment India Limited Vs Omesh Mishra Memorial Charitable Trust (2022) 15 SCC 176 on which reliance was placed on behalf of the Petitioners, the Appellant before the Supreme Court claimed to be a bonafide purchaser of the property which was subject matter of the decree of eviction and possession. In that context, the Supreme Court enunciated the law as under:

"22. From a bare reading of the aforesaid provisions, it is clear that Order XXI Rule 97 deals with the resistance or obstruction to possession of immovable property by "any person" obtaining possession of the property against the decree holder. It empowers the "decree holder" to make an application complaining about such resistance or obstruction. On the other hand, Rule 99 of Order XXI deals with the right of "any person" other than the judgment debtor who is dispossessed by holder of a decree for possession of such property or in case where such property is sold in furtherance of execution of a decree. The said provision vests "any person" with a right to make an application complaining about such dispossession of immovable property in the manner prescribed

above. Rule 98 and Rule 100 deal with the power of the Court to pass appropriate orders upon an application preferred under Rule 97 and Rule 99 respectively.

23. Insofar as Rule 101 is concerned, it confers jurisdiction on the Court as well as casts an obligation to determine the questions relating to right, title or interest in the property, if any, arising between parties on an application made by the person concerned under Rule 97 or Rule 99 in the same proceedings for adjudication and not in a separate suit. Lastly, Rule 102 clarifies that Rule 98 and Rule 100 shall not apply in a case where resistance or obstruction in execution of a decree for the possession of immovable property is offered by "transferee pendente lite" i.e., the person to whom the property is transferred by the judgment debtor after institution of the suit in which the decree sought to be executed was passed.

24. On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the "decree holder" who is entitled to make an application in case where he is offered resistance or obstruction by "any person". In the present case, as admitted by the appellant itself, it is a bona - fide purchaser of the property and not the "decree holder". As available from the material placed on record, it is the respondent trust alongwith legal heirs of late N.D. Mishra who are the decree holders and not the appellant. Therefore, it is obvious that appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree passed in favour of respondent. Further, Rule 99 pertains to making a complaint to the Court against "dispossession" of the immovable property by the person in "possession" of the property by the holder of a decree or purchaser thereof.

25. It is factually not in dispute that appellant purchased the said property from Mr. Yogesh Mishra vide sale deed dated 12.04.2004 and has been in vacant and physical possession of the property since then. Had it been the case that the appellant was dispossessed by the respondent trust in execution of decree dated 02.09.2003, the appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession. On the contrary, the appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make an application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99.

26. Now, as stated above, applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes as mentioned above. Now, in the present

case, Order XXI Rule 101 has no applicability as the appellant is neither entitled to make an application under Rule 97 nor Rule 99 for the reasons stated above. Accordingly, we find no substance in the argument raised by learned counsel for the appellant.

27. In such circumstances, the Executing Court had no occasion to frame issues and give direction to parties to lead evidence on objections raised by appellant. By doing so, the Executing Court transgressed the scope of Order XXI Rule 97 and Rule 99. Therefore, in our considered view, the High Court has rightly set aside the order of Trial Court entertaining the objections filed by appellant under Order XXI Rule 97 to Rule 102."

19. In the light of the aforesaid exposition of law, re-adverting to the facts of the case, as noted above, the core controversy between the parties is regarding the entitlement of Respondent Nos.1 and 2 to succeed to the estate of late Mahadu Tandel. As is evident, initially, legal heirship certificate was obtained by Respondent Nos. 1 and 2. However, subsequently, in the year 2009, the said legal heirship came to be canceled by an order dated 13th July 2018. In the meanwhile, in the year 2009, legal heirship certificate was granted in favour of Respondent Nos. 4 to 19. It is also necessary to note that the award refers to names of Mahadu Tandel and Joma Tandel and, in fact, the possession receipt was obtained from Joma Tandel. In the backdrop of the aforesaid nature of the dispute the transaction between the Plaintiff and Defendant Nos. 1 and 2 deserves to be appreciated.

20. Upon perusal of the Agreement of Assignment dated 28th July 2007 it becomes abundantly clear that Respondent Nos. 1 and 2 proposed to transfer a plot of land admeasuring 900 sq mtrs to be allotted by Cidco to the assignors at Ulwe, Navi Mumbai, under the Award. It is not the case that on date of execution of the said Agreement for Assignment, the transfer by Cidco in favour of Defendant Nos. 1 and 2 was completed. It appears that a Letter of Intent was issued on 14th July 2007. Incontrovertibly, the entitlement to the said plot hinged upon the acquisition of the land for the New Town and as and by way of compensation for the said acquisition. In this view of the matter, the character of Respondent Nos. 1 and 2 as legal representatives of late Mahadu Tandel and, consequently, the persons who were entitled to succeed to the estate of late Mahadu Tandel was the core issue to be determined. The revocation of heirship certificate granted in favour of Respondent Nos. 1 and 2 and the grant of heirship certificate in favour of Respondent Nos. 4 to 19 are thus required to be appreciated in the aforesaid context.

21. The aforesaid being the nature of the dispute between the parties, in my considered view, the decree for specific performance which commanded Respondent Nos. 1 to 3 to execute the transfer Deed in favour of the Plaintiffs, could be resisted by filing an Application before the executing Court. The delivery of possession of the plot by Cidco to the Plaintiff is essentially consequential to the execution of the Deed of Transfer, i.e., a tripartite Agreement. Therefore, it

cannot be urged that since there was no question of dispossession of Respondent Nos. 4 to 19 or for that matter resistance was not offered to the delivery of possession by Respondent Nos. 4 to 19, the resistance did not fall within the realm of Order XXI Rule 97.

22. Viewed through the aforesaid prism, the learned Civil Judge committed no error in holding that the question of resistance to the execution of the decree and its executability were required to be adjudicated. Thus, there is no infirmity in the impugned order which warrants interference in exercise of supervisory jurisdiction. Hence the following order:

: ORDER:

(i) Petition stands dismissed.

(ii) Rule discharged.

(iii) No costs.

1. At this stage, the learned Counsel for the petitioner seeks continuation of the status quo order passed by this Court on 8th November 2019.

2. For the reasons indicated in this judgment and order, the prayer for continuation of the status quo does not deserve countenance. Hence, the oral application for continuation of the status quo stands rejected.