

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1080 OF 2018

Mrs. Shabira S. Inamdar .. Petitioner
vs.
Mrs. Imtiazabi A. Kazi and ors. .. Respondents

Mr. P.G. Jagdale for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 29 MARCH 2019.

PC:-

- 1] Heard Mr. P.G. Jagdale, learned counsel for the petitioner.

- 2] The challenge in this petition is to the order dated 14th December 2017 by which the learned executing Court has rejected the petitioner's application under Order 21 Rule 29 of CPC.

- 3] In the facts of the present case, the decree which is sought to be executed is dated 17th February 1994. The petitioner had instituted an appeal against such decree but such appeal was withdrawn. Thereafter, a separate suit has been filed and on the basis of the same, stay of the execution is applied for by resort to the provisions of Order 21 Rule 29

of CPC. The learned Trial Judge has, upon analysis of the case laws, quite correctly held that the powers under Order 21 Rule 29 of CPC are discretionary. Thereafter, learned Trial Judge, has examined the matter and given cogent reasons for not granting the relief of stay on the execution.

4] In ***Quazi Toufigur Rahman vs. Nurbanu Bibi – AIR 1976 Gau 39***, it is held that whilst exercising discretionary in such matters, the executing Court should be alive to the position the decrees which are obtained after litigation spread over years, should not be frustrated. Therefore, unless a very strong case is made out for exercise of discretion, the execution of decree should not be stalled or stayed.

5] In the present case, the learned Trial Judge, has quite correctly held that the petitioner has failed to make out even a *prima facie* case much less a strong case as is required for exercise of powers under Order 21 Rule 29 of CPC. There is no unreasonableness in the exercise of discretion by the executing Court.

6] For all the aforesaid reasons, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

7] At this stage, learned counsel for the petitioner, relies on the decision of the Supreme Court in ***Krishna Singh vs. Mathura Ahir – 1981 (4) SCC 421*** and he makes specific reference to paragraphs 15 to 17.

8] Paragraph 15 of the aforesaid decision refers to suppression of fact by the petitioner and therefore, the same is not relevant. Paragraph 17 refers to the settled position that for the purpose of exercise of powers under Order 21 Rule 29 of CPC , the execution proceedings and fresh suit should be pending in one and same Court. In this case, the executing Court has not non-suited the petitioner on the ground that the proceedings are pending in different Court.

9] As was rightly pointed out by the learned counsel for the petitioner what is relevant is the observations in

paragraph 16 of the decision in *Krishna Singh (supra)*, which reads thus:

"16. WE are rather amazed to find that the totally unwarranted plea taken by Sri Krishna Singh seems to have found favour with the Civil Judge who readily accepted the prayer of Sri Krisna Singh of staying the execution of the decree without realising the scope and ambit of Order 21, Rule 29. Under this provision, jurisdiction has to be exercised with very great care and only under special cases. The Civil Judge also prima facie held that Harshankaranand was not a legal representative of late Mahant when this question was only left open and had to be decided by the Civil Judge. This shows the causal and perfunctory approach which was made by the Civil Judge. It is rather unfortunate that even the District Judge in revision affirmed the Order of the Civil Judge."

10] From the aforesaid observations, it is very clear that the Hon'ble Supreme Court itself has held that the powers under Order 21 Rule 29 of CPC have to be exercised with very great care and only under special cases. In the case before the Hon'ble Supreme Court, the learned Civil Judge, had exercised such powers in a casual and perfunctory manner and this order of the learned Civil Judge was confirmed by the District Judge. The Hon'ble Supreme Court in paragraph 16 had observed that this was quite unfortunate.

11] Fortunately, in the present case, the learned Trial Judge has examined the matter in great details and thereafter declined to exercise the powers under Order 21 Rule 29 of CPC. Therefore, the impugned order, is quite consistent with the law laid down by the Supreme Court in *Krishna Singh (supra)*.

12] For the aforesaid reason as well, this petition is liable to be dismissed and is hereby dismissed.

(M. S. SONAK, J.)