

**K. Gopalrao and Others Vs. Deepak Niranjath Pandit**

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**Court :** Mumbai

**Decided On :** Apr-29-2013

**Judge :** Anoop V. Mohta

**Appeal No. :** Execution Application (Ldg.) No. 1445 of 2012 In Misc. Application No. 26 of 2011 In Case No. 45 of 2010

**Appellant :** K. Gopalrao and Others

**Respondent :** Deepak Niranjath Pandit

**Judgement :**

**Oral Judgment:**

1 The Applicants, the original Plaintiffs/Decree Holder have filed this Execution Application under Order XXI, Rule 11 (2) of the Code of Civil Procedure, 1908 (C.P.C.) and have prayed as under:

a) This Hon'ble Competent Authority be pleased to order that the said flat as well as the salary, provident fund and gratuity accumulated till date and that may be accumulated in future and/or any other property of the Respondent be attached.

b) The said flat as well as the salary, provident fund and gratuity, accumulated till date and that may be accumulated in future and/or any other property of the Respondent be ordered to be sold/realised to recover the said amount of Rs. 29,50,000/- with interest thereon till payment.

c) Cost of this Application be provided for.

d) Such other and further reliefs be granted as this Hon'ble Competent Authority deems fit and proper.

2 The Respondent did not surrender the possession till the judgment and decree dated 5th July, 2011 passed on an Application under section 24 of the Maharashtra Rent Control Act (the Rent Act). Therefore, whether this Application for execution of the order passed by the Competent Authority, invoking civil jurisdiction of this Court is maintainable?

3 The provisions under the Rent Act are clear and so also the civil jurisdiction of the respective Courts. Section 47 is reproduced as under:

47. Bar of jurisdiction:- Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Competent Authority or the State Government or an officer authorized by it is empowered by or under this Act, to decide and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such Officer. The Office, therefore, has rightly raised objection to the maintainability of the execution application in view of the bar under the Section.

4 This Court in Chamber Summons No. 792 of 2009 in Execution Application No. 290 of 2008 in the case of **Smt. Asmabi Ahmed Baba Shaikh and Anr. vs. Smt. Rani Bhagwat Singh**, decided by Dr. D.Y. Chandrachud, J., dated 27th August, 2009, has noted as under:

3. Section 47 of the Maharashtra Rent Control Act, 1999, provides that save as otherwise expressly provided in the Act, no civil court shall have jurisdiction in respect of any matter, which the Competent Authority or the State Government or an Officer authorized by it is empowered by or under the Act to decide. The Applicants were, therefore, justified in moving the Competent Authority for the issuance of warrant of possession which, as noted above was issued. The order of the Competent Authority was confirmed by this Court on 30<sup>th</sup> March, 2007.

Therefore, there was in any event, no warrant in law to move this Court in execution proceedings for the issuance of a fresh warrant of possession. The effect of Section 45 read with Section 47 of the Maharashtra Rent Control Act, 1999 is that the Competent Authority alone has jurisdiction to execute its orders under the Act.

5 The above observations are undisputed position of law. I am in agreement with the view taken by this Court in the similarly situated matters. Such execution application is not maintainable in this Court. The remedy is elsewhere. In view of the specific provisions available under the Rent Act, the bar, therefore, so created in my view cannot be overlooked as sought to be contended by the learned counsel appearing for the Applicants that this execution is only for recovery of the money or monetary claim. The provisions under the Rent Act take care of possession as well as such monetary claims.

6 It is made clear that the disposal of this Chamber Summons in no way debars the Applicants from filing and taking execution application in accordance with law.

7 Resultantly, the following order is passed:

- i. The Execution Application arising out of the Judgment and Decree passed by the Competent Authority under the Maharashtra Rent Control Act is not maintainable in the ordinary original civil jurisdiction of this Court.
- ii. The Execution application is accordingly dismissed with liberty. No costs.

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