



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5563 OF 2023

- 1] Purbha s/o. Tulsa @ Tulsiram Dhutde
Age – 70 years, Occ. - Agri.,
R/o. - Brahmanwada, Tq. Mudkhed,
Dist. Nanded
- 2] Damu s/o. Tulsa @ Tulsiram Dhutde
Died through L.Rs.
- 2a] Bhagwan s/o. Damaji Dhutde
Age : 50 years, Occ. : Agri.,
R/o. - Brahmanwada, Tq. Mudkhed,
Dist. Nanded
- 2b] Suman d/o. Damaji Dhutde
Suman w/o. Balaji Lone
Age : 42 years, Occ. : Agri. & Household,
R/o. - Hivra Tq. Ardhapur,
Dist. Nanded

... PETITIONERS

VERSUS

- 1] Mohd. Jafar s/o. Shaikh Ismail
Age : 58 years, Occ. - Business,
R/o. : Nanded through G.P.A. Holder,
Shaikh Faisal s/o. Shaikh Salim
Age : 31 years, Occ. - Business,
R/o. : Nagar Galli, near Degloor Naka,
Nanded, Dist. Nanded

... RESPONDENT

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Ms. Manjiri A. Kulkarni – Advocate for Petitioners
Mr. C.C. Deshpande – Advocate for Respondent

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 23.01.2026

J U D G M E N T :

1. Heard. **Rule.** Rule made returnable forthwith. Heard the petition with the consent of the learned Counsel appearing for both sides at the stage of admission.
2. By way of this petition, the petitioners are challenging the order dated 18.04.2023 passed below Exhibit-30 by the learned Civil Judge, Junior Division, Mudkhed in R.D. No.3/2021, whereby the executing Court directed detention of the judgment debtor in civil prison for a period of one month for breach of the decree passed in Regular Civil Suit No. 456 of 2002.
3. Learned Counsel for the petitioners submits that the executing Court ought not to have passed such a stringent order of sending the judgment debtor to civil prison, as it directly affects personal liberty. It is further submitted that no notice was served upon the judgment debtor nor was any opportunity of hearing granted before passing the impugned order below Exhibit-30. Learned Counsel contends that even if there was breach of the decree, the executing Court was duty-bound to issue notice and call for an explanation from the judgment debtor before resorting to coercive action. The failure to do so vitiates the impugned order and renders it liable to be set aside.
4. In support of the aforesaid submission, learned Counsel places

reliance on the judgment of the Hon'ble Apex Court in **Bhudev Mallick alias Bhudeb Mallick and Anr. vs. Ranajit Ghoshal and Ors.**, reported in 2025 SCC OnLine SC 360, particularly paragraph 59, which reads thus:

“59. Before we close this matter, we would like to put a question to the executing court as to why it did not deem fit to afford one opportunity of hearing to the appellants herein? What would have happened if the executing court would have permitted the appellants herein to place their written objections on record? It is true that there was some delay on the part of the appellants herein in responding to the summons issued by it, but at the same time, having regard to the severe consequences, the executing court should have been a little more considerate while declining even to take the objections on record and give one opportunity of hearing to the appellants before passing the order of arrest, detention in a civil prison and attachment of the property. This aspect unfortunately has been overlooked even by the High Court while affirming the order passed by the executing court. The High Court itself could have remanded the matter to the executing court with a view to give an opportunity of hearing to the appellants herein. The supervisory jurisdiction vested in the High Court under Article 227 of the Constitution is meant to take care of such situations like the one on hand.”

Accordingly, it is submitted that the impugned order deserves to be quashed and set aside.

5. *Per contra*, learned Counsel for the respondent supports the impugned order and submits that the decree in Regular Civil Suit No.456

of 2002 was passed on 25.06.2004. Due to continuous obstruction and intentional disobedience by the judgment debtor, execution proceedings were initiated. Despite an injunction operating against the judgment debtor, the decree was willfully breached. In view of such deliberate conduct, the executing Court was justified in passing the order of detention. He therefore prays for dismissal of the petition.

6. Having heard the rival submissions of the learned Counsel appearing for both sides at length, I find that the executing Court passed the impugned order without issuing notice or affording any opportunity of hearing to the judgment debtor. Such an order, which entails deprivation of personal liberty, is in clear violation of the principles of natural justice. Even assuming that a breach of the decree was noticed, the executing Court was expected to issue notice to the concerned judgment debtor and call for an explanation before ordering detention in civil prison. Failure to follow this mandatory requirement renders the impugned order unsustainable. Therefore, I am inclined to allow the petition.

7. Learned Counsel for the respondent submits that the decree holder had deposited an amount of Rs.9,000/- towards subsistence allowance for detention of the judgment debtor.

8. In view thereof, I proceed to pass following order :-

ORDER

- (a) The Writ Petition is allowed.
 - (b) The order dated 18.04.2023 passed below Exhibit-30 by the learned Civil Judge, Junior Division, Mudkhed in R.D. No.3/2021 is quashed and set aside.
 - (c) The decree holder is permitted to withdraw the amount of Rs.9,000/- (rupees Nine Thousand only).
 - (d) The executing Court is directed to decide the execution proceedings in accordance with law within a period of one (1) year from today.
9. Pending Civil Applications, if any, also stand disposed of.
10. Rule is made absolute in the above terms.

[SIDDHESHWAR S. THOMBRE]
JUDGE

Pooja Kale/