HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Writ Petition No.2804/2015

Satya Pal Anand…………………………… **Petitioner**
Versus

Bal Neketan Nyas, Bhopal
and two others…………………………….. **Respondents**

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Coram

Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice
Hon'ble Mr. Justice Alok Aradhe, J.

Date of Hearing: 19.03.2015

Date of the Order: 24.03.2015

Whether approved for reporting? Yes

Petitioner in person.

Mrs.Shobha Menon, Senior Advocate with Ms.Ankita Khare, Advocate for the respondent No.1.

None for respondent No.2.

Mr.Swapnil Ganguly, Government Advocate for the respondent No.3.

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O R D E R
(24.3.2015)

Per Alok Aradhe, J.

In this petition titled as one under Article 226 read with Articles 14, 19, 21, 215 and 235 of the Constitution of India, the petitioner has prayed for multiple reliefs which are reproduced below for the facility of reference:

"7.(a) In view of the submissions made above, the impugned order dated

16.12.2014 directing dismissal of the MJC No.40/2013 be kindly be quashed by a writ of Certiorari and granting such other reliefs as deemed deserved in law exercising constitutional powers vested in this Hon'ble Court under Article 226 of the Constitution of India and by a writ of Mandamus the respondent No.2 be directed not to re-issue any warrant of delivery of physical possession of the premises in the lawful possession of the petitioner in this own rights till the mandatory investigations are completed as per law, so that a running business of the petitioner is not disturbed abruptly in violation of his rights to have justice as per law of this land.

(b) And the amount of the compensation claimed be kindly granted as prayed or such other amount as estimated to be just upon the facts herein in the public law proceedings and the respondents be directed to make payment of the directed amount of the compensation and exemplary costs in a just time and report compliance to this Hon'ble Court within directed time.

(c) And the respondent No.3 be kindly directed to investigate and submit his report under what circumstances such heavy Police force remained at the premises of the petitioner when it is said in the order dated 16.5.2014 that there was no judicial order passed directing the Police force to be present there during the far long time when the execution of the warrant for delivery of the physical possession was being carried out on 23.4.2014 till 2.00 p.m. and even thereafter without the authority of law and directing such action against the process servers who have made a false statement of fact that there was no police force when they had been executing the warrant under question on 23.4.2014.

(d) That the order passed in case of MJC No.563/12 on 16.12.2014 be kindly quashed and set aside passing such order thereupon as deemed just.

> *(e) That Judges (Protection) Act, 1985 be kindly read down as prayed herein.*
>
> *(f) That such further or additional reliefs as deemed just be kindly granted together with costs deemed just".*

2. In order to appreciate the scope and ambit of reliefs and the context in which the aforesaid reliefs are prayed for by the petitioner, it is apposite to refer to few relevant facts which are stated *infra*. The respondent No.1 Trust filed a suit for eviction, possession and *mesne* profits against Anand Automobiles of which petitioner is the owner and proprietor. In the plaint, it was averred that provisions of M.P. Accommodation Control Act, 1961 (hereinafter referred to as "the Act") are inapplicable to the suit premises as it is owned by a charitable trust, in view of notification dated 7.9.1989 issued by the State Government granting exemption to accommodations from provisions of the Act issued in exercise of powers under Section 3(2) of the Act from provisions of the Act. The tenant resisted the suit inter-alia on the ground that issuance of notification dated 7.9.1989 does not result in an exemption from provisions of the Act in so far as respondent No.1-Trust is concerned. The trial Court framed an issue and

decided the same in favour of respondent No.1 vide order dated 15.3.2004. Being aggrieved, the petitioner filed a writ petition namely W.P. No.3192/2004 in which following reliefs were claimed:-

> *"(i) for a declaration that Section 3 of the Act are unconstitutional.*
>
> *(ii) for a declaration that the notification dated 7.9.1989 issued by the M.P. State Government in exercise of power under Section 3(2) of the Act is constitutionally invalid and void ab initio and also ultra vires Section 3(2) of the Act.*
>
> *(iii) for a declaration that each Trust claiming an exemption from the applicability of the Act, will have to make an application to the State Government disclosing the particulars entitling them to exemption under Section 3(2) of the Act and the State Government will have to decide whether such Trust is entitled to the exemption after hearing the affected persons and a further declaration that the notification dated 7.9.1989 does not grant any general exemption to charitable Trusts in particular the second respondent-Trust, from the application of the Act.*
>
> *(iv) for a consequential declaration that the civil Court has no jurisdiction to entertain or hear the suit for eviction Civil Original Suit No.20-A/2002 filed by the second respondent-Trust.*
>
> *(v) for quashing the order dated 15.3.2004 passed by the trial Court answering the preliminary issue in favour of the landlord, the provision of Section 3(2) of the Act is unconstitutional".*

3. A Division Bench of this Court vide order dated 17.8.2004 dismissed the writ petition. The relevant extract of the order reads as under:-

> *"Once the Supreme Court has held that the notification dated 7.9.1989 is valid, it is impermissible for us to entertain a contention that the decision of the Supreme Court upholding the validity of the notification dated 7.9.1989 is erroneous with reference to some general principles laid down in an earlier decision of the Supreme Court. As the notification which is under challenge has been upheld by the Supreme Court and the other reliefs claimed by the petitioner are consequential upon the relief relating to the validity of notification dated 7.9.1989, the petition is liable to be dismissed as having no merit. Accordingly, it is dismissed".*

4. The petitioner once again filed an application raising similar objection in the Civil Suit, which was rejected by the trial Court vide order dated 29.11.2005. That order was subject matter of challenge at the instance of the petitioner in W.P. No.2842/2006, in which a Division Bench of this Court granted stay of proceeding before the trial Court, which was subsequently vacated vide order dated 17.7.2012. The trial Court vide judgment and decree dated 10.10.2012 decreed the suit for eviction and directed the petitioner to vacate the suit premises and to deposit arrears of rent due to respondent No.1-Trust.

5. The petitioner filed First Appeal No.1037/12, which was admitted by a Bench of this Court vide order dated 21.12.2012 and the execution of the decree for eviction was stayed subject to fulfillment of conditions mentioned therein. The relevant extract of the order reads as under:-

> *"Several contentions have been raised by appellant including virus and provisions as envisaged under Section 3 of the M.P. Accommodation Control Act to be unconstitutional and further it has been submitted that appellant never agreed to pay rent @ Rs.15/- per square feet of the tenanted premises and therefore he is not bound to pay or deposit the rent as decided by learned trial Court in the impugned judgment. Appellant further submits that notice of enhancement of rent sent by respondents to appellant was never served upon him although it was served upon his Manager. Hence according to him, service on Manager of said notice cannot be said to be service upon appellant. It has also been submitted by him that he is ready to pay or deposit the contractual rent which is Rs.75/- per month. Hence, it has been prayed that monetary part of the decree be also stayed alongwith the eviction part of the decree till the decision of this appeal.*
>
> *Having heard appellant and learned senior counsel for respondents, it is directed that eviction part of the decree shall remain stayed till the decision of this appeal. However, since there will be no irreparable loss to the appellant in depositing the decreetal amount and further he will not suffer any irreparable loss in case he deposits monthly rent @ Rs.5692/- as directed by learned trial Court that part of decree is not stayed.*

The objection which appellant has raised during the course of argument shall be decided at the time of final adjudication of the appeal.

Thus, the execution of eviction part of decree shall remain stayed on the following conditions:-

(i) The appellant shall deposit decreetal amount of Rs.1,13,840/- on or before 22.12.2012 in the trial Court/ Executing Court.

(ii) he shall also deposit the monthly rent @Rs.5692/- strictly in terms to Section 13 of the M.P. Accommodation Control Act.

(iii) the appellant shall also deposit the cost of plaintiffs/respondents on or before 22.12.2012 as directed by the learned trial Court and

(iv) the respondents No.1 to 12 shall be free to withdraw the amount so deposited by appellant in the trial Court/Executing Court after furnishing security to the satisfaction of that Court.

It is however, made clear that if any of the aforesaid conditions is violated by the appellant, the respondents No.1 to 12 shall be free to execute the decree".

6. Thereafter, a Division bench of this Court vide order dated 22.4.2014 dismissed the writ petition namely W.P. No.2842/2006. The relevant extract reads as under:-

"5. Suffice it to observe that the issue regarding validity of the provisions and including the

notification in question has already been dealt with in extenso by the Division Bench of this Court vide order dated 17th August, 2004 whilst dismissing the writ petition No.3192/04. In our opinion, it is not possible to depart from the said legal position and in any case permit the petitioner to resort to successive proceedings for the same issue.

6. Besides, we find that the issue raised by the petitioner that the impugned notification does not deal with cardinal requirement stipulated in sub-section (2) of Section 3 of the Act that the whole of the income derived from which is utilized for that institution or nursing home or maternity home. This aspect has been dealt with by the Apex Court in the case of ***Ramgopal and another Vs. Balaji Mandir Trust and others****, AIR 2003 SC 1883. From para 4 of the said decision, it is clear that this very contention was raised on behalf of the appellants therein but it did not find favour with the Apex Court. In the circumstances, the observation made in the order dated 22nd February, 2006 by our predecessors is no impediment for us to answer the preliminary objection raised by the respondents, which we find to be appropriate. Accordingly, this petition ought to fail.*

7. We may place on record that the petitioner has asked for further reliefs including to initiate criminal contempt action against First Additional District Judge, Bhopal. However, in our order passed Yesterday, while disposing of I.A. No.12193/2012, we have made it clear that the present petition having been filed under Articles 226 and 228 of the Constitution of India cannot be mixed up with the relief of initiating criminal contempt action and, more so, without making the person concerned party-respondent in the proceeding. As a result, even that relief need not detain us in disposing of this petition.

10. We also place on record that the petitioner has filed interlocutory applications No.14871/2012 for stay; 13881/2012 for taking subsequent events on record, 669/2013 for quashing the judgment and decree passed on 10.10.2012 by the Ist Additional District Judge, Bhopal and other reliefs; 1474/2014 application for amendment in the relief clause of the main petition and 4834/2014 for recalling the order dated 10.03.2014. In view of the dismissal of the

> *writ petition, in our opinion, there is no need to hear these applications separately and the same, therefore, are disposed of.*
>
> *11. At this stage, the petitioner makes an oral request that the order passed today should be kept in abeyance for a period of four weeks to enable the petitioner to file SLP before the Apex Court.*
>
> *12. We find no reason to accede to this request. It is a matter of record that the petitioner has already filed First Appeal against the decree passed by the trial Court in which interim relief has been granted in favour of the petitioner. In that sense, no prejudice will be caused by rejecting the request for continuing the stay of this order. In fact, in the present petition, there is no interim order operating, as of today. Hence, this request is turned down".*

7. Being aggrieved by the impugned judgment and decree of eviction and arrears of rent dated 10.10.2012, the petitioner filed an application under Order 21 Rule 35 and Rule 103 of the Code of Civil Procedure which was registered as MJC No.561/12 on the ground that the decree for eviction does not bind the petitioner as the decree has been passed against the partnership firm whereas, the petitioner is in possession of the suit shop as owner of Anand Automobiles. The petitioner also filed an application which was registered as MJC No.40/13 in which inter-alia it was prayed that judgment and decree dated 10.10.2012 is null and void as the same has been passed in violation of Articles 14, 19, 21, 50, 141, 215 and 301 of the Constitution of India. The

Executing Court rejected both the applications vide order dated 16.12.2014. The application preferred by the petitioner under Order 21 Rule 35 read with Rule 103 of the Code of Civil Procedure was rejected on the ground that petitioner participated in the proceeding for eviction and in case he was not in occupation of the suit shop as partner, but as owner, he ought to have taken objection at the first instance. Having failed to do so, the petitioner is estopped by his conduct and the decree deserves to be executed against the petitioner, as he himself is in possession of the suit shop. The application preferred by the petitioner for recalling the judgment was rejected on the ground that judgment and decree dated 10.10.2012 is subject matter of challenge in the First Appeal.

8. Thus, from above narration of facts, it is evident that principal relief in this petition preferred under Article 226 of the Constitution of India is to seek quashment of order dated 16.12.2014 passed in MJC No.561/12 and MJC No.40/13 by the executing court.

9. At the outset, learned senior counsel for respondent No.1 has raised an objection with regard to maintainability of this petition under Article 226 of the Constitution of India, in view of law laid down by Three Judge Bench of Supreme Court in the case of ***Radheshyam and another Vs. Chhabinath and others***, 2015 SCC Online SC 170 and has contended that judicial orders of the Civil court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. In view of aforesaid preliminary objection raised by learned senior counsel for respondent No.1, we called upon the petitioner to address this Court with regard to maintainability of the writ petition which has been filed under Article 226 of the Constitution of India, which is directed against the orders passed by the Executing Court.

10. We have heard the petitioner as well as learned senior counsel for respondent No.1 only on the issue of maintainability of this writ petition preferred under Article 226 of the Constitution of India and, therefore, we shall deal with the aforesaid limited question whether the present writ petition filed under Article 226 of the Constitution of India

against the order passed by the Executing Court is maintainable.

11. The petitioner submitted that the decision of the Supreme Court in the case of ***Naresh Shridhar Mirajkar Vs. State of Maharashtra***, AIR 1967 SC 1 has been dealt with in the celebrated case of ***His Holiness Keshavanand Bharti Vs. State of Kerala and another***, AIR 1973 SC 1461 and, therefore, the ratio laid down in the case of ***Mirajkar (supra)*** stands watered down if not overturned, in terms of the view taken by the larger Bench. The petitioner has invited our attention to paragraphs 1717 to 1719 of the judgment in the case of ***Keshavanand Bharti (supra)*** and has submitted that judiciary is a State and is an authority under Article 12 of the Constitution of India and judicial process is a State action. While referring to judgment of the Supreme Court in the case of ***S.P. Gupta Vs. Union of India*** (1981) Supp. SCC 87, it is contended that judiciary is a separate but equal part of the State and is duty bound to meet the constitutional objection of providing economic and social justice through the process of law and must be involved not merely as an umpire but more actively to bring social and

economic justice to common man. It is further submitted that violation of fundamental right itself renders the judicial decision a nullity. In this connection, reliance has been placed on a decision of the Supreme Court in the case of ***A.R. Antuley Vs. R.S. Nayak***, (1988) 2 SCC 602. While referring to paragraph 58 of the decision of the Supreme Court in the case of ***State of Rajasthan Vs. Prakash Chand***, (1998) 1 SCC 1, it is pointed out that Constitution of India vests limited powers to all Judges at all levels and that a Judge is although free but not totally free. It is also pointed out that Dr. Durga Das Basu has criticized the dictum in Mirajkar's case (supra) and has observed that the same is contrary to the Constitution of India.

12. It is urged that decision of the Supreme Court in Mirajkar's case (supra) is apparently unconstitutional in as much as it holds that a judicial decision never violates fundamental right. It is also contended that State as well as respondent No.1-Trust and respondent No.2, who is a Judicial Officer, who has intentionally, willfully and deliberately refused to follow judgments of the Supreme Court, has rendered himself liable for facing *suo motu* contempt

proceeding and for payment of compensatory cost. In this connection reference has been made to the decisions of Supreme Court in the case of ***Pritam Pal vs. High Court of Madhya Pradesh, Jabalpur,*** AIR 1992 SC 904**,** ***Rabindra Nath Singh vs. Rajesh Ranjan alias Pappu Yadav and another*****,** (2010) 6 SCC 417 and **AIR 2009 SC 2214**. It is also pointed out that the petitioner has claimed the relief for reading down the Judges Protection Act and the aforesaid reliefs can be granted only in a writ petition filed under Article 226 of the Constitution of India. It is also urged that the Executing Court while passing the impugned judgment has committed jurisdictional error which renders the judgment *ultra vires* and, therefore, the same is nullity. In this connection, reliance has been placed on a decision of the Supreme Court in **(1981) Supp. SCC 87** and ***Central Inland Water Transport Corporation vs. Brojo Nath Ganguly***, (1986) 3 SCC 156.

13. It is urged that the writ petition was lawfully filed and has been entertained by this Court directing issuance of notices and in compliance of the order dated 5.3.2015, the petitioner has already paid the process fee. It is further submitted that decision

rendered by Three Judge Bench in the case of Radheshyam and another (supra) appears to be limited to a case whereupon on facts, relief is claimed to quash the order passed by the Civil Court and no other relief is claimed as has been claimed in the instant writ petition. Therefore, the decision in the case of Radheshyam and another (supra) has no application. It is also submitted that decision of Radheshyam and another (supra) is per-incuriam, as it has failed to notice the decision rendered by 13 Judge Bench of the Supreme Court in the case of Keshavanand Bharti (supra). It is also urged that reasonable time be granted to the petitioner so that he could make deeper study on question of law. Lastly, it is contended that any adverse order is passed against the petitioner, operation of the order dated 25.2.2015 be suspended for a period of four weeks in order to enable the petitioner to approach the Supreme Court.

14. On the other hand, learned senior counsel for respondent No.1 submitted that principal relief claimed in this writ petition is with regard to quashment of orders dated 16.12.2014 passed by the Executing Court in MJC No.561/12 and MJC

No.40/13. It is further submitted that Three Judge Bench of the Supreme Court in the case of ***Radheshyam (supra)***, by placing reliance on decision rendered by Nine Judge Bench in the case of ***Mirajkar (supra)*** has rightly held that judicial orders passed by the Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India and, therefore, the instant writ petition is not maintainable under Article 226 of the Constitution of India. It is further submitted that the petitioner has statutory remedy available to him under Code of Civil Procedure, 1908 as his objection preferred under Order 21 Rule 97 of the Code has been rejected. In case, the petitioner feels that the objection has been rejected upon adjudication, the remedy of an appeal under Order 21 Rule 103 of the Code of Civil Procedure is available to him and in the alternative, the remedy of filing a revision under Section 115 of the Code of Civil Procedure is available to the petitioner. It is contended that the present writ petition is frivolous and vexatious proceedings initiated by the petitioner knowing full well that it is open to him to challenge the validity of the decree as well as the impugned order passed by the Executing Court by way of remedy prescribed under Order 21 of

the Code of Civil Procedure. Therefore, it is urged that in any case, the instant writ petition under Article 226 of the Constitution of India is not maintainable. Learned senior counsel for respondent No.1 has also referred to Division Bench decision of Himachal Pradesh High Court in the case ***Deepak Khosla Vs. State of Himachal Pradesh and others***, 2013 SCC Online HP 2955.

15. We have considered the respective submissions made by the petitioner and learned senior counsel for respondent No.1. As stated supra, we are dealing with the issue of maintainability of this writ petition preferred under Article 226 of the Constitution of India alone and are not expressing any opinion with regard to any other issues in writ petition and in particular on the merits of the decision of the Executing Court challenged in the writ petition.

16. On perusal of the multiple reliefs claimed in the writ petition, it is evident that the principal relief claimed in the writ petition is with regard to quashment of order dated 16.5.2014 passed by the Executing Court in MJC No.561/12 and MJC

No.40/13, which is evident from relief clause 7(a) (c) and (d) of the writ petition. The other reliefs are founded on the validity of order dated 16.05.2014 passed by the Executing Court and not independent thereto. In other words, the other reliefs claimed by the petitioner are intrinsically dependent on challenge to the validity of the said order – having been passed without jurisdiction and nullity in law. Suffice it to observe that the other reliefs may require consideration only if the petitioner succeeds in challenging the validity of the order passed by the Executing Court referred to above.

17. It is well settled in law that right to access to justice is a fundamental right. ***See: Manohar Joshi Vs. State of Maharashtra and others***, (2012) 3 SCC 619. However, that right is prescribed as per the procedure established by law. In this context, we may examine the grievance of the petitioner with regard to violation of fundamental right. In the instant case, the objection preferred by the petitioner under Order 21 Rule 97 of the Code of Civil Procedure has been rejected by the Executing Court vide order dated 16.5.2014 passed in MJC NO.561/12, which amounts to an adjudication under Order 21 Rule 101

of the Code of Civil Procedure. Against that order, the petitioner has the statutory remedy of filing an appeal under Order 21 Rule 103 of the Code of Civil Procedure. Similarly, against the order rejecting the application preferred by the petitioner for treating the judgment and decree dated 10.10.2012 passed in Civil Suit No.19-A/2004 by the Executing court as nullity, the petitioner has the remedy of filing a revision under Section 115 of the Code of Civil Procedure. ***See: Sawal Singh Vs. Ramsakhi***, 2002(4) MPHT 200. The contention raised in this writ petition about the validity of order of the Executing Court being without jurisdiction and nullity in law can be tested at the instance of the petitioner, if he were to resort to remedy under Order 21 of the Code of Civil Procedure mentioned herein before. It is not open to argue that that plea cannot be adjudicated by the forum/remedy provided for under Order 21 of the Code of Civil Procedure. Thus understood, the High Court should be loath to entertain the challenge such as in the present writ petition in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. For, statutory remedies are available to the petitioner for redressal of his grievance as well as in view of law laid down by Nine

Judge Bench of the Supreme Court in the case of Mirajkar (supra) and Three Judge Bench in the case of Radheshyam and another (supra), wherein, it has been held that judicial orders passed by the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India. The contention raised by the petitioner with regard to violation of fundamental right is *sans* any substance, as the petitioner is not being denied access to justice.

18. The reliefs claimed by the petitioner with regard to reading down the provisions of Judges Protection Act, payment of compensation as well as initiation of *suo motu* proceeding against respondent No.2 are concerned, in our considered opinion, in the facts of the present case, have been sought only to justify the remedy by way of writ petition under Article 226 of the Constitution of India. In one sense, the other reliefs claimed (except challenge to the validity of order of the Executing Court) are premature and superfluous. These reliefs may become necessary only if the Court of competent jurisdiction in the first instance were to accept the challenge founded on the argument that the order of the Executing Court is without jurisdiction and nullity in

law. As a matter of fact, if the Court of competent jurisdiction were to accept that argument of the petitioner, as a necessary corollary, it would quash and set aside the order of the Executing Court on that count. We may hasten to add that the other reliefs, as sought, in the writ petition, are to justify the challenge to the order passed by the Executing Court by way of petition under Article 226. We may reiterate that if the competent forum in the specified proceedings, resorted to by the petitioner under Order 21 were to accept the plea of nullity of the decree or the order passed by the Executing Court which it is competent to do, then only the question of reading down the provisions of Judges Protection Act and for grant of compensation and initiation of *suo motu* contempt proceeding against respondent No.2 may arise which may have to be dealt with on it's own merit. Such a stage has not at present arisen, as the finding is yet to be recorded by the competent forum with regard to the validity of the judgment and decree dated 10.10.2012.

19. As the principal reliefs for consideration in this writ petition are of quashment of orders dated 16.12.2014 in M.J.C.Nos. 563/2012 and 40/2013

passed by the Executing Court, therefore, the ratio laid down in ***Radheshyam (supra)*** squarely applies to the facts of the present case and the contentions of petitioner that said decision does not apply, deserves to be repelled.

20. As far as the contention of the petitioner that the law laid down by Nine Judge Bench of the Supreme Court in the case of ***Mirajkar (supra)*** is per-incuriam and that the decision in the case of Supreme Court in the case of ***Radheshyam (supra)*** is also per-incuriam for the same reason, we are afraid we cannot entertain this contention as the law laid down in ***Mirajkar's case (supra)*** as well as in the case of ***Radheshyam (supra)*** binds us under Article 141 of the Constitution of India. [***See: Suganthi Suresh Kumar vs. Jagdeeshan***, (2002) 2 SCC 420].

21. Similarly, the contention of the petitioner that writ petition has already been entertained by this Court is concerned, the same only deserves to be stated to be rejected. The order dated 05.3.2015 reads as under:-

> *"**05.03.2015***
> *Petitioner- Satya Pal Anand appears in person.*

Smt.Shobha Menon, Senior Advocate with Ms.Ankita Khare, Advocate for the respondent no.2.

The principal grievance of the petitioner is that objection filed by him on 16th March, 2013 has remained undecided and the Executing Court hastened to pass final orders first on 23rd April, 2014 which later on was recalled and again on 16th May, 2014.

According to the petitioner, the order dated 16th May, 2014 does not deal with the written objection filed by the petitioner on 16th March, 2013. According to the petitioner, not deciding the objection has vitiated the order dated 16th May, 2014.

Issue notice to the respondents.

Respondents to deal with this contention specifically and place on record relevant documents as may be advised along with the affidavit to be filed before 10th March, 2015.

Rejoinder, if any, be filed before 12th March, 2015.

List on ***13th March, 2015****.*

The advance copy of reply-affidavit be made available to the petitioner.

At this stage, petitioner submits that the respondents may hasten with the execution of the decree and for which reason interim protection be granted.

Counsel for the respondents submits that the returnable date given by the Executing Court is 23rd Marcy, 2015.

In that case, in our opinion, no interim order is required at this stage. In the event, the matter pending before this Court cannot be decided before 23rd March, 2015, the Court may consider request for grant or non-grant of interim relief.

C.C. today."

Thus, it is evident that while issuing notice this Court has not dealt with the issues of maintainability of the writ petition. It is also noteworthy that despite

opportunity being granted the petitioner has not filed any rejoinder affidavit.

22. The petitioner had lastly submitted that he may be given some more time to prepare as he may have to raise constitutional issues of some significance. In our opinion, keeping in mind the dictum of the recent Supreme Court decision directly on the point which is binding on this Court, no fruitful purpose would be served by giving further time to the petitioner, inasmuch as, the argument of the petitioner that the dictum of *Mirajkar's case* as well as Radheshyam's case is per-incuriam, if not nullity cannot be entertained by this Court as is the well established position. Hence, we reject the request of the petitioner to give further time for preparation.

23. As far as the submission made by the petitioner that the order dated 25.2.2015 should be kept in abeyance so as to enable him to approach the Supreme Court, we are not inclined to accede to the said prayer, as the petitioner is at liberty to resort to remedy prescribed by law before the Competent Court which may deal with the same in accordance with law.

24. In view of preceding analysis, we hold that writ petition as framed and filed under Article 226 of the Constitution of India is not maintainable. However, the petitioner would be at liberty to take recourse to such other remedy as may be available to him under the law. However, there shall be no order as to costs.

25. Having held that the writ petition is not maintainable, we do not deem it necessary to examine the grievance of the respondents about the frivolity of present proceedings resorted to by the petitioner with full understanding to gain some more time and to deny the respondents of the fruits of the decree operating in their favour – because of non-fulfilment of the conditions by the petitioner which were imposed as condition precedent for stay of execution of the decree.

26. In the result, the writ petition is dismissed with the liberties, as aforesaid.

(**A.M. Khanwilkar**)
Chief Justice

(**Alok Aradhe**)
Judge

a/rm.