

# Chandrakala Gunaji @ Balaso Chavan vs Pankaj Laxmikant Desai on 13 January, 2020

**Bench: Deepak Gupta, Aniruddha Bose**

ITEM NO.34

COURT NO.14

SECTION III

## S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS

SLP(C)No. 19987/2019

(Arising out of the final judgment and order dated 17.7.2019 passed by High Court of Judicature at Bombay in Writ Petition No. 6707 of 2019)

CHANDRAKALA GUNAJI @ BALASO CHAVAN & ORS.

Appellant(s)

VERSUS

PANKAJ LAXMIKANT DESAI & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.125618/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.125619/2019-EXEMPTION FROM FILING O.T. )

Date : 13-01-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA  
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Appellant(s)

Mr. Yatin M. Jagtap, Adv.  
Mr. Shrikant Deshmukh, Adv.  
Mr. Jetendra Chaudhary, Adv.  
Mr. Wasi Haider, AOR

For Respondent(s)

Mr. Hrishikesh Chitale, Adv.  
Mr. Vijay Hari Singh, Adv.  
Mr. Samir Malik, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

(SUMAN WADHWA) (PRADEEP KUMAR) AR CUM PS BRANCH OFFICER Signed order is placed on the file IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 245.OF 2020 (Arising out of SLP(C) No. 19987/2019) CHANDRQAKALA GUNAJI @ BALASO CHAVAN ....APPELLANT(S) VERSUS PANKAJ LAXMIKANT DESAI ...RESPONDENT(S) O R D E R Leave granted.

This petition has been filed against the order of the High Court dated 17.7.2019 whereby the petition was rejected and the order of the Trial Court directing notice in execution proceedings has been upheld directing grant of police aid to the respondent to remove the obstructions allegedly raised by the appellant.

Briefly stated the facts necessary for the disposal of the appeal are that the appellant herein filed a suit for injunction praying that the respondent be restrained from obstructing on their possession of the suit premises and the open space adjacent to the same. The Trial Court vide judgment and decree dated 9.3.2016 granted injunction in respect of the rooms but rejected the claim of the appellant with regard to the open space holding that the appellant had failed to show that they are entitled to possession of the same. The Appeal filed by the appellant was dismissed and the decree has become final.

Vide the impugned order dated 29.4.2019 on an application filed by the respondent the Executing Court found that in order to remove the illegal obstruction raised by the appellant herein it was necessary to take the help of police officials and police aid was granted to the respondent. The main issue which arises for consideration is whether there was any decree or order passed in favour of the respondent which is capable of execution. Admittedly there is no decree in favour of the respondent. The respondent mainly relies on the fact that the claim of the appellant with respect to the open land has been rejected. In our opinion it would not mean that there is executable order in favour of the respondent. The remedy of the respondent is to take out independent proceedings to claim possession in accordance with law. If such proceedings are taken out, obviously both sides can take all defenses which may be open to them. It is however clear that in the absence of any decree or an order in favour of the respondent it could not file any execution petition. The Executing Court had no jurisdiction to pass an order granting police assistance to the respondent.

We therefore set aside the order of the High Court and Trial Court. The respondent is free to take any remedy which may be available to it under law.

The Appeal is disposed of accordingly.

.....J  
(DEEPAK GUPTA)

New Delhi;  
13th January, 2020.

.....J.  
(ANIRUDDHA BOSE)