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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.270 OF 2025**

Rupa Jitendra Deshprabhu  
60 years of age,  
Wife of Jitendra Deshprabhu,  
R/o. H No.4/68, Nanerwada,  
Pernem-Goa.

... Petitioner.

*Versus*

1. Dr. Vasudev Rajendra Deshprabhu  
Son of late Rajendra V. Deshprabhu  
Major of age, r/o Nanerwada,  
Pernem Goa.

2. Nayantara Rajendra Deshprabhu  
Daughter of late Rajendra V. Deshprabhu  
Major of age, r/o. Nanerwada,  
Pernem Goa.

2(a). Miss Mzunelini Jitendra Deshprabhu,  
Major of age, r/o. Nanerwada,  
Pernem Goa.

2(b). Master Yuvraj Jitendra Deshprabhu  
Major of age, r/o. Nanerwada,  
Pernem Goa.

3. Mrs. Aparna Rajendra Deshprabhu  
Widow of Rajendra V. Deshprabhu,  
Major of age, r/o. H. No. 844, Nanerwada,  
Pernem-Goa.

4. Shri Devendra Raghuraj Deshprabhu

Major of age,  
r/o. H. No. 4/69, Nanerwada  
Pernem-Goa.

5. Shri Jitendra Raghuraj Deshprabhu  
(deceased)  
through Legal heirs

... Respondents.

Ms. Arundhati Katju, Senior Advocate with Mr. Gaurish Agni, Mr. Ankur Kumar, Ms. Ritika Meena, Mr. Siddharth Acharya, Ms. Ankeeta Appanna, Mr. Kishan Kavlekar and Mr. Tanvir Khatib, Advocates for the Petitioner.

Mr. S.D. Lotlikar, Senior Advocate with Mr. Prasheen Lotlikar, Mr. Bhavesh Lotlikar, Mr. Ronak Naik, Mr. P. Hegde, Mr. Sarvesh Sawant and Ms. Priyadarshini Volvoicar, Advocates for the Respondents.

<b>CORAM:</b>	<b>VALMIKI MENEZES, J.</b>
<b>RESERVED ON:</b>	<b>26<sup>th</sup> June, 2025</b>
<b>PRONOUNCED ON:</b>	<b>11<sup>th</sup> July, 2025</b>

### **JUDGMENT:**

1. Registry to waive office objections and register the matter.
2. The Petitioner invokes the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to impugn order dated 24.04.2024 passed by the Civil Judge Senior Division, Panaji Goa, whereby, the Court rejected an Application under Section 47 read with Section 151 and with Order XXI Rule 58, 97, 98, 100, 101 and 103 of the Civil Procedure Code 1908, filed by the Petitioner in the Regular Execution Proceeding No.21/2018 before the Civil Judge Junior Division

at Panaji; by this application (Exhibit D-19 before the Executing Court), the Petitioner raised objections to the Execution Application filed by Respondent Nos. 1, 2, 2(a), 2(b) and 3 (original Decree Holders in SCS no.82/1990/A(old) RCS No.440/2000/C(new)) that she was the legally wedded wife of Jitendra and under the Regime of Communion of Assets under Article 1108 of the Portuguese Civil Code, she was entitled to have objections adjudicated.

3. It is the Petitioner's case that an earlier application dated 30.08.2019 (Exhibit D-9 of the record of the Execution Proceeding) filed by the Petitioner, styled as "An application under Section 47 read with Section 151 CPC", the Petitioner claiming to be wife of original Judgment Debtor No. 2, Jitendra Raghuraj Deshprabhu, as his moiety under the Regime of Communion of Assets, and being entitled to 50% right in the suit property under execution, ought to be impleaded and be heard in the Execution Proceeding. It was the Petitioner's case that this application for impleadment (Exhibit D-9) was dismissed by an order dated 11.04.2022 of the Executing Court, and was upheld by a Judgment dated 10.07.2024 of this Court whilst dismissing Writ Petition No. 476 of 2024 at the behest of the Petitioner; it is further Petitioner's case that whilst the aforesaid application was pending before this Court, second application at Exhibit D-19 came to be filed on 06.10.2023, on which the impugned order was passed, which was referred to in this Court's order dated 10.07.2024, whilst rejecting the petition. The Petitioner then contends that she challenged this Court's order dated 10.07.2024 before the Supreme Court in SLP(C) No. 19083/2024, which came to be dismissed without notice to the Respondents on 27.08.2024, with the following observations made in

para 3 of its order:

*“3. We are of the view that the remedy pursued by the petitioner under Section 47 of the Code should have been taken to its logical conclusion on merits instead of dismissing the application on the ground that an intervention application was also pending.”*

4. The main ground raised in the petition was that, in tune with the observations made in para 3 of the order dated 27.08.2024 of the Hon’ble Supreme Court, the Executing Court ought to have decided the application at Exhibit D-19 dated 06.10.2023; a further ground is raised in the petition that the order dated 27.08.2024, of the Hon’ble Supreme Court has in effect set aside the impugned order dated 24.04.2024, and observed that the objections under Section 47 (Exhibit D-19 dated 06.10.2023) ought to be taken to its logical conclusion on merits.

5. Learned Senior Advocate Ms. Arundhati Katju, appearing for the Petitioner has advanced the following submissions:

(a) It was submitted that after order dated 11.04.2022 was passed by the Executing Court dismissing Exhibit D-9, an application for intervention filed by the Petitioner and whilst Writ Petition No. 476/2024 was pending before this Court, the Petitioner filed the second application on 06.10.2023 marked Exhibit D-19 by the Executing Court. It was submitted that the second application dated 06.10.2023 raises detailed objections to the Execution under Section 47 read with Order 21 Rule 97 CPC, claiming that the Petitioner was never arrayed as a Defendant in Regular Civil Suit No.440/2000, though she was the moiety

holder with respect to the suit property, being the wife of Defendant No. 2 Jitendra; it was further submitted that these objections also claimed that the Judgment Debtor No. 2 Jitendra being co-possessor of the suit property, would entitle the Petitioner to the possessory right to the shop as his wife in terms of Article 1108. It was further submitted that the objections also claimed that the Petitioner was in exclusive independent possession of the suit property from 21.04.2020, the date when Judgment Debtor No. 2, her husband passed away, based upon which she now claims exclusive independent rights, which ought to be adjudicated in terms of Order 21 Rule 97 to 105 CPC read with Section 47.

- (b) It was further submitted that the application at Exhibit D-19 was never decided on merits by holding an inquiry and was dismissed on 24.04.2024; the High Court was made aware of this order and after taking note of the same, proceeded to dismiss Writ Petition No. 476/2024 on 10.07.2024. The SLP against this order, no doubt came to be dismissed by the Supreme Court, but after making an observation in para 3 of its order dated 27.08.2024, that the remedy of the Petitioner under Section 47 of the Code should have been taken to its logical conclusion on merits instead of dismissing the application on the ground that an intervention application was also pending. It was then contended that the Supreme Court has in para 3 of its order impliedly set aside the order dated 24.04.2024 of the Executing Court on Exhibit D-19, and therefore the Executing Court is now required to decide

Exhibit D-19 on merits, after recording an inquiry in terms of Order 21 Rule 97 to 105 read with Section 47 CPC.

6. Senior Advocate Mr. Saresh Lotlikar has opposed these contentions on the basis of the following submissions:

(a) It was submitted that the SLP having been dismissed, all orders passed in the Execution proceedings namely order dated 11.04.2022, dismissing Exhibit D-9 (Application for impleadment styled as one under Section 47 of CPC), order dated 24.04.2024 passed on Exhibit D-19 (Application under Section 47 read with Order 21 Rule 97 to 105 CPC) had been considered by this Court in Writ Petition No. 476/2024 in its order dated 10.07.2024 have become final; it is contended that the order on Exhibit D-19 dated 24.04.2024 was referred to in para 3 of this Court's order dated 10.07.2024 after which the dismissal of Exhibit D-9 was confirmed. It was submitted that the whole purpose of filing Exhibit D-19 was to delay the execution proceeding and to continue with the illegal possession of the suit premises.

(b) It was further argued that Exhibit D-9 was, in fact, dismissed on merits by order dated 11.04.2022, since that order of the Executing Court has not only considered whether the Petitioner had raised sufficient grounds in her claim of title to the suit property, but the Court has also considered whether the Petitioner had any rights in terms of Article 1108 of the Civil Code, 1867 and has specifically held, after considering the case

law on the subject, that the Petitioner had no right to claim an independent title to the suit property.

(c) It was then submitted that the SLP was dismissed without notice to the Respondents and the observations made in para 3 could not bind the Respondents or operate as if they set aside order dated 24.04.2024 on Exhibit D-19. He further submits that a Judgment of a Court should not be interpreted as a statute and the meaning of the words used in the Judgement must be found out from the background of the facts of each case. The observations in para 3 of the order of the Supreme Court could not operate to take away a right of the Respondents indirectly, after it has succeeded in obtaining a Decree. It is further submitted that the observations of the Supreme Court are not binding as it is not a ratio of the decision nor does it determine that the order dated 24.04.2024 passed on Exhibit D-19 was set aside. Reliance is placed on the following Judgments:

1. ***Vasudha Vasand Dabholkar v/s Sudesh Govekar and 9 Ors (Second Appeal no.621/2022(F), High Court of Bombay at Goa).***
2. ***Dadu Dayalu Mahasabha, Jaipur (Trust) v/s Mahant Ram Niwas and Another (2008) 11 SCC 753.***
3. ***Bool Chand Thr Legal Representatives and Ors v/s Rabia and Ors (2016) 14 SCC 270.***

7. The point that falls for determination in this petition is whether, in the facts of the case, and in the light of the observations in para 3 of the

order dated 27.08.2024 of the Hon'ble Supreme Court, the impugned order dated 24.04.2024 calls for any interference.

For the determination of the above question, reference would have to be made to the chronology of the various events and orders passed, both, in SCS no.82/1990/A(old) RCS No.440/2000/C (new) which culminated in a Decree of eviction dated 23.06.2009, and in the Execution Proceeding No. 21/2018, followed by the proceedings in this Court and before the Supreme Court.

8. SCS No.82/1990/A(old) RCS No.440/2000/C(new) was filed by the Respondent Nos. 1, 2, 2(a), 2(b) and 3 /original Plaintiffs for a Decree of eviction and mesne profit with respect to the suit property, against Respondent No. 4 (Devendra) and against late Respondent No. 5 (Jitendra) whose wife is the Petitioner herein. In the Judgment and Decree passed on 23.06.2009, directing eviction of Devendra and Jitendra (Defendants) from the suit property, Issue No. 6 framed therein was whether the Defendants proved that they were in continuous and open possession of the ground floor of the building where the suit property was situated as owners thereof. To prove this issue, Jitendra, husband of the Petitioner led evidence by examining himself and was ultimately held to be in unlawful possession of the suit property. The Decree was challenged before the District Court in RCA No. 75/2009 by the Defendants, which was dismissed on 05.03.2013, confirming that the Defendants were in unlawful possession of the suit premises, which finding was confirmed by this Court in Second Appeal No. 28/2015 in its Judgment dated 21.09.2017. Special Leave Appeal 33674/2017 filed against this Court's



Judgment and Decree was dismissed by the Supreme Court on 15.12.2017 making the Decree for eviction in the suit final.

9. The Respondent Nos. 1, 2, 2(a), 2(b) and 3 /Decree Holders thereafter filed Execution Proceedings No. 21/2018 in the Court of the Civil Judge Junior Division, Panaji on 18.08.2018, which was opposed by the Decree Holders including the husband of the Petitioner vide reply dated 02.07.2019. In this reply, the Judgment Debtors claimed a prescriptive right to the suit property under Article 529 of the Portuguese Civil Code. In para 17 of the reply, the Judgment Debtors also claimed that their spouses had not been joined as parties to the suit, and the decree suffers from non-joinder of parties as they were married under the Regime of Communion of Assets. According to the Judgment Debtors, their spouses (One of whom is the Petitioner herein) are entitled to half of the undivided right in the other's assets, hence they automatically acquire joint ownership of all assets owned and to be inherited, as provided in Article 1108, 1117 and 1119 of the Portuguese Civil Code.

10. On 30.08.2019, the Petitioner filed an Application for impleadment (Exhibit D-9) styled as one under Section 47 of CPC seeking intervention in the execution proceedings. The Application claimed that she was not impleaded in the RCS No. 82/1990/A(old) RCS No. 440/2000/ (new), she being the legally wedded wife of Jitendra, (the Judgement Debtor No.2) married under the Regime of Communion of assets, which entitled her 50% share in his property. Whilst this Application was pending, her husband, the Judgement Debtor No.2 Jitendra passed away on 21.04.2020.

11. The Petitioner's Application for impleadment (Exhibit D-9) was dismissed by the Executing court vide its order dated 11.04.2022 on the ground that the suit property was not an asset belonging to the estate of Jitendra, as he was held not to be in lawful occupation.

Whilst deciding this application, the executing Court framed a point for determination as to whether the Petitioner had prima facie proved that there were sufficient grounds for the Petitioner to be allowed to intervene in the Execution Proceedings. The Executing Court then considered the scope of the provisions of Section 47 of the Code and the fact that the Petitioner was seeking to object to the recovery of possession of the suit property under the decree, on the ground that she was married under the regime of Communion of Assets under the Civil Code of 1887 and would be entitled to 50% share in the suit property through her husband Jitendra. The executing Court also considered the fact that the Petitioner was not party to the suit, it also took into consideration that the Judgement Debtor No.2, Jitendra was held to be a trespasser on occupying the suit property as such, and further that the Petitioner was aware about this legal position and did not seek impleadment even at the Appellate stage.

The executing Court than considers the contention of the Petitioner that, in terms of Article 1108 of the Civil code of 1867, she had a right to 50% of the property of the spouse and after considering the judgments of this Court in *Union of India v/s Zelia Rodrigues* (1991 (2) GLT 2) and in *Amol Bade v/s Dattatray Ghule* (2014 (3) ALL MR 644), it held that since the decree was final, holding the property belonged to the Decree holder, neither the Judgement debtor nor his spouse could claim the same

on grounds already decided by the Court passing the decree. It further held that the claim to the extent of 50% share of her husband by the Petitioner was misplaced since her husband was declared a trespasser and his occupation of the suit premises was by virtue of being a trespasser. It then held that no right could be claimed by the Judgement Debtor No.2 Jitendra who was declared trespasser, and consequently no such right would devolve on his spouse, the Petitioner. Thus, the Executing Court has decided the Petitioner's application under Section 47 (exhibit D-9) on merits, prima facie holding that the Petitioner had no independent right to the suit shop.

12. This order was challenged by the Petitioner before this Court in WP. No 476/2024 filed on 27.06.2023. Whilst the Petition was pending, the Petitioner filed a second application dated 06.10.2023 (Exhibit D-19), this time styled as one under Section 47 read with Order 21 Rule 97 to 105 CPC. In this application, the Petitioner objected to the execution of the decree on the ground that she was the wife of Jitendra, and was the co-possessor of the suit property, even prior to the filing of the RCS No. 82/1990/A(old) RCS No. 440/2000/ (new), and that, after the death of Jitendra on 21.04.2020, she was possessing the suit property independently.

13. The application at Exhibit D-19 was dismissed by the Executing Court vide order dated 24.04.2024 holding that the application was filed on the same grounds as raised in earlier application under Exhibit D-9, though referring to different provisions of law. This is the order impugned in the present Petition.

This Court vide order dated 10.07.2024, dismissed WP.No.476/2024, holding that the Petitioner has been held to be a trespasser and, therefore, not entitled for any intervention in the execution proceedings. This Court also referred to the fact that the second application at Exhibit D-19 had been dismissed vide order dated 24.04.2024 and it was not expected that the Petitioner would agitate the very same defence in that Petition whilst simultaneously pressing for similar objections before the executing Court.

14. The Petitioner then filed SLP(C) No.19083/2024 in the Hon'ble Supreme Court on or about 29.07.2024, which was registered on 20.08.2024 and was taken up for hearing and dismissed by the Supreme Court vide order dated 27.08.2024. There was no petition filed in this Court, in the meantime to challenge order dated 24.04.2024 on Exhibit D-19, nor does it appear from the record that it was brought to the notice of the Hon'ble Supreme Court that Exhibit D-19 (application under Section 47 r/w Order 21 Rule 97 to 105) had already been dismissed on 24.04.2024. It is also not the contention of the Petitioner that there was any specific challenge thrown to the order dated 24.04.2024 passed by the Executing Court before the Hon'ble Supreme Court, and this is evident from the fact that the Petitioner thought it appropriate to challenge this very order, by filing the present Writ Petition only on 31.01.2025, almost nine months after the order was passed. There is also no explanation found in the body of the present Writ Petition justifying the gross delay in challenging this order and the only ground taken is that in effect, the order of the Supreme Court has set aside the impugned order, by the observation made in para 3 thereof.

15. Even after the SLP was dismissed on 27.08.2024, no challenge was thrown to the impugned order of 24.04.2024 for almost five months, and the decree under execution continued to be kept in abeyance. Even after filing the present petition on 31.01.2025, no circulation was sought of the petition and it was only on 19.03.2025 that the Petitioner sought to press for an interim relief of stay of the execution proceedings. On 19.03.2025, this Court recorded the Petitioner's submission that the Petitioner would apply for recall of the impugned order dated 24.04.2024, before the Executing Court on the basis of the observations made in para 3 of the Order of the Supreme Court dated 27.08.2024. This Court also recorded that the Petitioner would make such an application within a week from 19.03.2025 and consequently, directions came to be given to the Executing Court that if such an application was made, the same be disposed of preferably within a month from the filing thereof. This petition was then deferred to 02.05.2025.

16. Instead of filing the application within a week, as undertaken to this Court, the Petitioner filed the application on 28.03.2025 (Exhibit D-36 before the Executing Court). Along with this application, the Petitioner attempted to better her case by placing various documents, including a certificate of registration dated 05.02.2025 (after dismissing of earlier applications) along with various other documents including Income Tax Returns, Balance Sheets pertaining to her claim to possession. This application (Exhibit D-36) was dismissed by the Executing Court on 24.04.2025 with a detailed order. In this order, the Executing Court holds that the earlier application under Section 47 (Exhibit D9) had been dismissed after specifically discussing the question of the right of

intervention and giving reasoned findings thereon, which have not been set aside. The Court opined that it could not interfere with such findings which were rendered on the merits of the application. The Court opined that since the earlier applications were dismissed on merits, the same could not be recalled to prejudice the Decree Holder. The Court then proceeded to issue a warrant of possession to recover possession of the suit property. Even this order has not been challenged before this Court or by way of amendment to this petition.

17. Considering the urgency of the hearing of this petition, and the fact that the same came up for hearing practically on the last working days of this Court before the Summer Vacation, this Court passed an order dated 06.05.2025 protecting the Petitioner from eviction until the next date of hearing, which interim relief was extended on 13.06.2025 and thereafter the petition was finally heard on 26.06.2025.

18. Section 47 CPC mandates that all questions arising between the parties to a suit in which the decree was passed or relating to the execution or satisfaction of a decree shall be determined only by the Court executing the decree. It further mandates that where the question arises as to whether any person is or is not representative of a party to the suit, such question shall be determined by the Executing Court.

19. The Petitioner initially claimed to be co-owner of the suit property with her husband in terms of the provisions of the Civil Code 1867, by virtue of which she stated that she was a co-possessor of the suit property and was required to be heard in the suit. She does not claim a title totally

independent of the Defendants. Her first application under Section 47 (Exhibit D-9) was filed while her husband was alive and had himself filed objections to the decree, on the very same grounds. This application was dismissed on merits after specifically holding that the finding in the Judgment and Decree was that the husband of the Petitioner was a trespasser in the suit shop and was holding the same as a trespasser. This finding was rendered in the Judgment passed in the suit and was confirmed all the way till the Hon'ble Supreme Court. The finding that the Defendants, including Jitendra, husband of the Petitioner was a trespasser and, therefore, liable to be evicted has attained finality. This finding has been specifically considered in paras 17 to 23 of the order dated 11.04.2022 passed on the application under Section 47 (Exhibit D-9) filed by the Petitioner. This order was assailed all the way to the Supreme Court, which has dismissed the SLP against order dated 10.07.2024 of this Court in Writ Petition No.476/2024. Clearly, therefore, the Petitioner is a person bound by the decree, now even more so since her husband Jitendra passed away immediately after filing of the application at Exhibit D-9. She cannot now claim a right independent of her husband.

**20.** In *Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Anr.* reported in (1998) 3 SCC 723, the Supreme Court has considered, both, the question of who is a third party to the decree who can obstruct recovery of possession, and the question as to whether, in all cases, the Executing Court is obliged to conduct a full-scale inquiry for the purpose of adjudication under Order 21 Rule 97 to 105 CPC to determine the objections of such third party. The relevant parts of the Judgment are quoted below:

- “10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102 Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.*
- 11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint*
- 12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as C would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resister raised it. The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is*



*necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.*

*14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for, such determination if the court deems it necessary.”*

21. Thus, as held in *Silverline* (supra), the Executing Court may, in an application under Section 47 decide whether the case made out in an application of a third party, warrants a full scale adjudication and inquiry. In Exhibit D-9, the application filed by the Petitioner under Section 47, all that the Petitioner claims in seven paragraphs thereof is that she is the legally wedded wife of Jitendra, Judgment Debtor No.2 and she was not impleaded as a Defendant in the suit; she claims she is married under regime of Communion of Assets and therefore is entitled to 50% share in the suit property. There is not a single document annexed to the application nor averment made claiming a title independent of her husband. The Trial Court considered the application and has given a specific finding that since the Petitioner’s husband Jitendra was held to be a trespasser, which finding is confirmed consistently by all the Courts and by the Supreme Court, she has no right to claim an independent title.

There is also a specific finding whilst rejecting her contentions, and after considering the rights of the spouse under Article 1108 of the Civil Code of 1867, that since the Judgment Debtor No.2 was in illegal occupation of the premises, such rights could not devolve upon, or be claimed by the Petitioner. There is also a specific finding given by the Executing Court in paras 19 and 22 of its order dated 11.04.2022 that the suit premises have been held, in the Judgment and Decree passed in RCS No.440/2000/C, not to be part of the estate of the Judgment Debtor No.2. The findings on this application are, therefore, rendered on merits, and have attained finality since the Hon'ble Supreme Court, in its order dated 27.08.2024 has dismissed the SLP against an order dated 10.07.2024 of this Court in Writ Petition No.476/2024, which confirms the order on Exhibit D-9 dated 11.04.2022 passed by the Executing Court. There was, therefore, no question of again deciding the claim made by the Petitioner on merits, as the decision on merits had already been rendered, rejecting her contentions.

**22.** This is therefore a case where there was no requirement for holding a full scale inquiry and adjudicating upon a frivolous claim raised by the Petitioner, which had already been rejected on merits. The observations of the Supreme Court in paras 10, 11, 12 and 14 of *Silverline* (supra) apply to the facts of the present case.

This Court in *Vasudha Vasant Dabholkar v. Sudhesh Govekar and Ors.* (supra), considered a somewhat similar situation where the decree passed against some of the siblings was sought to be obstructed in execution by their sister, in the same manner as sought to be done by the

Petitioner herein. Whilst dismissing the application under Order 21 Rule 97 to 105 CPC filed by one of the siblings, and making reference to *Silverline* (supra), this Court has made the following observations:

*“5. Respondents no.1 to 5, i.e. the decree holders in the above suit, had already instituted execution proceedings in 2014. However, even after the Hon'ble Supreme Court disposed of the appeal, for some reason, the execution did not proceed at the desired pace. Therefore, the decree holders instituted proceedings Page 4 of 22 15th October 2022 903-SA-621-22 (F).DOC before this Court which were disposed of by Order dated 20.06.2022. Accordingly, this Court directed the Executing Court to dispose of the pending execution proceedings as expeditiously as possible and, in any case, within three months.*

*6. At this stage, the Appellant, who is the sister/sister-in-law of the judgment debtors in Regular Civil Suit No.226/2006/E, filed Obstructionist Proceedings invoking the provisions of Order 21, Rule 97 r/w 101 of the CPC. By Order dated 14.12.2021, the Executing Court dismissed the Application. The First Appellate Court dismissed the appeal on 05.03.2022. Hence the present Second Appeal.*

*30. Considering the close relationship between the Appellant and her brothers and the circumstance of the Appellant waiting in the wings all along and filing the obstructionist application only after the execution proceedings were ordered to be expedited, the unsubstantiated plea of the independent claim could not be a valid ground to delay or obstruct the execution any further.*

*36. On the aspect of a full-fledged trial, it is not as if a full fledged trial is a must no sooner the obstructionist approaches the Executing Court with an application under Order 21, Rule 97 r/w 101 of the CPC. However, at least a prima facie case raising some serious issue to be tried must be made out. The questions raised should have legally arisen between the parties to the proceedings. Further, they must be relevant to the adjudication. The Hon'ble Supreme Court so holds this in *Silverline Forum Pvt. Ltd.* (supra). Merely asserting that the plea raised was independent of the plea raised by the judgment debtors is insufficient. The independence has to be demonstrated at least prima facie. No parties have a vested interest in drawing mileage from the unfortunate delays in the*

*legal process.”*

23. Applying the observations in the above Judgment to the facts of the present case, and the application under Section 47 having been already decided on merits, the observations made by the Supreme Court in para 3 could certainly not have the effect of impliedly setting aside the order dated 11.04.2022 passed on Exhibit D-9.

The effect of the observations in para 3 of the order dated 27.08.2024 of the Hon'ble Supreme Court can also be viewed at from a different angle. The Judgment and Decree in the suit between the parties had attained finality and the Judgment Debtor No.2, husband of the Petitioner was held a trespasser. In execution of that Decree, which was passed way back in the year 2009, a warrant of possession had been issued in the year 2025. Now interpreting the observations in para 3 of the Hon'ble Supreme Court's order dismissing an SLP and upholding order dated 11.04.2022, to imply that a subsequent order dated 24.04.2024 passed on Exhibit D-19, on a fresh application under Section 47, was set aside, would amount to denying the Decree Holder of the fruits of the litigation which had attained finality all the way to the Supreme Court in the first round.

24. The observations or comments contained in orders of the Supreme Court whilst dismissing an SLP, are not to be read like statutes. The observations and comments are to be considered in the factual context of the entire case to which they relate. In its order dated 27.08.2024, nowhere has the Hon'ble Supreme Court set aside order dated 24.04.2024 passed by the Executing Court. In fact, this order was never challenged in any

petition before this Court, nor were any grounds raised before the Supreme Court in challenge to this order in SLP No. 19083 of 2024. On similar facts, whilst considering the import of such observations made by the Supreme Court in its orders, in *Dadu Dayalu Mahasabha, Jaipur V/s Mahant Ram Niwas and Another* (Supra) it was held as under:

*20. Rightly or wrongly a decision was arrived at that the first respondent was held to be not entitled to hold the gaddi and the management of the same. A legal right of the appellant with regard thereto was found favour with the first appellate court. On the aforementioned backdrop the implication of observations of this Court must be noticed and considered.*

*21. The order of this Court is in four parts i.e.:*

*(i) The High Court could not have reversed the finding of the first appellate court that the plaintiff was not in possession of the suit property on the date of the filing of the suit.*

*(ii) In view of the said finding a decree for injunction for which the suit was filed could not have been granted.*

*(iii) The judgment and decree of the first appellate court shall be restored after setting aside the judgment and decree of the High Court.*

*(iv) The said judgment would not come in the way of the respondent-plaintiff in filing a suit for possession, if he is so advised.*

*22. The judgment of a court, it is trite, should not be interpreted as a stature. The meaning of the words used in a judgment must be found out from the backdrop of the fact of each case. The court while passing a judgment cannot take away the right of the successful party indirectly which it cannot do directly. An observation made by a superior court is not binding. What would be binding is the ratio of the decision. Such a decision must be arrived at upon entering into the merit of the issues involved in the case.*

25. Applying this logic to the facts of the present case, the observations in para 3 of the order of the Hon'ble Supreme Court have not, by

implication, set aside or impliedly operate as setting aside, order dated 24.04.2024 on the second application under Section 47.

26. This brings me to the challenge to the impugned order dated 24.04.2024 in this petition. Perusal of the application at Exhibit D-19 would reveal that the exact same stand, as taken by the Petitioner in the first application under Section 47 at Exhibit D-9 has been repeated therein. Only this time, since the original Judgment Debtor No.2, husband of the Petitioner had by then expired on 21.04.2020, an additional stand is taken that she was not only co-possessor of the suit property until the death of her husband but she is also in exclusive independent possession of the same since 21.04.2020 till the date of filing the application i.e. 06.10.2023. Even in this application, there is not a single document relied upon to demonstrate how the Petitioner claims a title independent of her husband. Her husband has already been held a trespasser and there is no title, other than through her husband, based on which she opposes possession of the suit property from being recovered by the Court.

27. The Executing Court, by the impugned order has considered the previous order passed on Exhibit D-9 and has concluded that the second application under Section 47 is filed on the very same grounds as the earlier rejected application. It also holds that the findings rendered on merits on Exhibit D-9 had not been set aside and the second application would also not be maintainable. There is no infirmity that can be found in this finding since it is based upon the correct considerations of the record.

28. The Hon'ble Supreme Court in *Periyammal (Dead) through Lrs. and Others v. V. Rajamani and Another* reported in 2025 SCC OnLine SC 507 has addressed the alarming problem of delays in completing execution proceedings. It has also addressed the manner in which Executing Courts are required to deal with frivolous objections raised by filing applications under Section 47 r/w Order 21 Rule 97 to 105 CPC. In dealing with this trend, the Supreme Court has made the following observations:

*“72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.*

*73. It is worthwhile to revisit the observations in Rahul S. Shah (supra) wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:*

*"42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:*

*42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.*

*42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.*

*42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.*

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claims to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his



*behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.*

*42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.*

*42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.*

*42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.”*

*(Emphasis supplied)*

*74. The mandatory direction contained in Para 42.12 of Rahul S. Shah (supra) requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in Bhoj Raj Garg v. Goyal Education and Welfare Society, Special Leave Petition (C) Nos. 19654 of 2022.*

*75. In view of the aforesaid, we direct all the High Courts across the country to call for the necessary information from their respective district judiciary as regards pendency of the execution petitions. Once the data is collected by each of the High Courts, the High Courts shall thereafter proceed to issue an administrative order or circular, directing their respective district judiciary to ensure that the execution petitions pending in various courts shall be decided and disposed of within a period of six months without fail otherwise the concerned presiding officer would be answerable to the High Court on its administrative side. Once the entire data along with the figures of pendency and disposal thereafter, is collected by all the High Courts, the same shall be forwarded to the Registry of this Court with individual reports.*

*76. Registry is directed to forward one copy each of this judgment to all the High Courts at the earliest.*

*77. The Registry shall notify this matter once again after seven months only for the purpose of reporting compliance of the directions issued by us referred to above.*

*78. In the result, the appeals succeed and are hereby allowed. The impugned judgment passed by the High Court is hereby set aside. The order passed by the Executing Court is also hereby set aside.*

*79. The Executing Court shall now proceed to ensure that vacant and peaceful possession of the suit property is handed over to the appellants in their capacity as decree holders and if necessary, with the aid of police. This exercise shall be completed within a period of two months from today without fail.”*

29. The observations of the Hon’ble Supreme Court, therefore, mandate that all Executing Courts should endeavour to complete the execution of Decrees which have attained finality preferably within six months of the execution proceedings commencing. The glaring facts of the present case would disclose that in a suit filed in the year 1990, the decree of eviction was passed in 2009, confirmed by the District Court in the year 2013 and in Second Appeal by this Court in 2017. The Supreme Court dismissed the SLP against the original Judgment and Decree in the year 2017 making the decree of eviction attain finality. The execution proceedings commenced in the year 2018 and have been dragged on, first by the husband of the Petitioner until his demise in 2020, and thereafter by the Petitioner, who has filed one frivolous application after another, the last one being in the year 2024. Further, note must be taken of the fact that after the SLP was dismissed on 27.08.2024 making the order dated 11.04.2022 on Exhibit D-9 under Section 47 final, the impugned order dated 24.04.2024 was not challenged for almost a year, when the present

petition was filed on 31.01.2025. There is no explanation offered in the petition to justify the serious delay in challenging this order. This petition would therefore clearly be barred by delay and laches, which would be yet another reason for refusing to entertain the same in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. This is certainly a case of cantankerous contest with a view to delaying the execution of the decree; the conduct of the Petitioner would justify costs being imposed on the Petitioner.

**30.** For the reasons stated above, the writ petition is dismissed with costs of Rs.20,000/- to be paid to the Respondent Nos. 1, 2, 2(a), 2(b) and 3. The Executing Court, i.e. the Court of the Civil Judge, Junior Division, Panaji, dealing with the file of REXA No. 21/2018, shall proceed with the execution proceedings and bring them to a logical end expeditiously and in any event within a period of a month from the passing of this order.

**VALMIKI MENEZES, J.**