



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4964/2023

- PETITIONERS :**
1. M/s. Prembrothers Infrastructure LLP
Through its authorized representative Mr. Ashok
S/o. Rameshwarlal Agrawal, Office Add: 11,
First Floor, Lajpat Nagar-IV, Ring Road,
New Delhi -110024.
 2. M/s. DJ Sons Hospitality
Through its authorized representative Mr. Ashok
S/o. Rameshwarlal Agrawal, Office Add: Flat
No. 201, Surya Kiran Building, 19 K.G. Marg,
New Delhi – 110001.

...VERSUS...

- RESPONDENTS :**
1. Narendra s/o Kesharao Khonde
(Ori. Plaintiff) Age : Major, Occ: Private
 - (Ori. Plaintiff) 2. Durgabai wd/o Kesharao Khonde
Age : Major, Occ: Housewife
 - (Ori. Plaintiff) 3. Usha d/o. Kesharao Khonde,
Age : Major, Occ: Housewife.
 - All 1 to 3 R/o. Mouza-Borgaon,
Post – Fetari, Tah. & Dist. Nagpur.
 - (Ori. Defendant) 4. Narayan s/o. Gangaram Khonde,
Since dead through his legal heirs:
 - 4.1) Laxmibai Narayan Khonde (Dead)

(Deleted as dead as per Hon'ble Court's Order
dated 23-10-24)

- 4.2) Mahavir @ Jagdish Narayan Khonde
Age: Major, Occ: Private

4.3) Manisha Wd/o. Krushnarao Khonde
Age: Major, Occ: Household

4.4) Akash Krushnarao Khonde
Age: Major, Occ: Private

4.5) Srushti Krushnarao Khonde,
Age: Major, Occu. Private
All 4.1 to 4.5., R/o. Plot No. 49, Gangoli Layout,
Somalwada, Wardha Road, Nagpur.

4.6) Sau. Baby Tanbaji Dhamane,
Age: Major, Occ: Housewife,
R/o. Khamla Bichayat Kendra, In front of
Chate Coaching Class, Khamala, Nagpur.

4.7) Sau. Tai Nathuji Churad,
Age: Major, Occ: Housewife
R/o. Shilpa Nagar, Beltarodi Road,
Gajanan Mandir, Galli No. 4,
Near Thakur's House, Nagpur.

4.8) Sau. Sudha Vijay Nakhale
Age: Major, Occ: Housewife,
R/o. Adjacent lane of the Orange City Hospital,
Deonagar, Nagpur.

(Ori. Defendant)

5. Maroti Narayan Khonde
Age: 49, Occ. Agriculturist
R/o. Plot No. 49, Gangoli Layout,
Somalwada, Wardha Road, Nagpur.

(Ori. Defendant)

6. Shyamrao Jago Khonde (DEAD)

7. The Tahsildar, Nagpur (Rural)
Add. Nagpur (Rural) Tahsil Office, Civil Lines,
Nagpur.

Mr. H.R. Gadhia, Advocate a/w Ms R.K. Swami & Aniket Sawal, Advocates for petitioners
Mr. Sahil M. Mate, Advocate for respondent Nos.1 to 3
Mrs. D.I. Charlewar, AGP for respondent No.7

CORAM : ROHIT W. JOSHI, J.

Date of reserving the judgment : 11/09/2025
Date of pronouncing the judgment : 22/09/2025

J U D G M E N T :

1. Heard. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned Counsel for the rival parties.

2. The present petition is filed in order to challenge the execution proceedings bearing Regular Darkhast No.71/2014 as also orders dated 18/07/2020 and 17/12/2022 passed under applications below Exhs.32 and 34 in the said proceedings. By the said orders, the learned Executing Court had ordered issuance of possession warrant with respect to the said property in order to hand over possession of the same to the decree holders who are respondent Nos.1 to 3 in the present petition. The petition was amended subsequently in order to challenge the order dated 13/09/2023 passed by the learned Executing Court rejecting application for intervention filed by the petitioners vide Exh.36 as also the subsequent order dated 20/09/2023 disposing of the execution petition.

3. The suit property is a piece of land admeasuring 2.33 acres being a part of Survey No.67 situated at village Mohgaon, Tah. and District Nagpur.

4. The respondent Nos.1 to 3 are grandson, daughter-in-law and grand daughter of deceased respondent No.6 (defendant No.3)/Shyamrao Khonde. They are the son, widow and daughter respectively of late Kesharao who was predeceased son of respondent No.6 – Shyamrao Khonde. The father of respondent Nos.1 and 3 and husband of respondent No.2 - Kesharao Khonde expired on 20/07/1981.

5. The respondent No.6 – Shyamrao had sold two properties vide sale-deeds dated 03/05/1975 and 22/04/1982 to respondent No.4 – Narayan Khonde and respondent No.5 – Maroti Khonde. Sale-deed dated 22/04/1982 pertains to the property which is the subject matter of the present petition. The said property comprises 2.33 acres of land bearing old Khasra No.40/1 and now being a part of Survey No.67 situated at Mouza Mohgaon Tahsil and District Nagpur (hereinafter referred to as “suit property”).

6. The respondent Nos.1 to 3 had filed a suit for partition and separate possession, being Regular Civil Suit No.1036/1988. In the said suit, sale-deeds dated 03/05/1975 and 22/04/1982 executed by respondent No.6 in favour of respondent Nos.4 and 5 were also assailed. The learned trial Court decided the suit vide judgment and decree dated 29/04/1991. The suit came to be dismissed with respect to sale-deed dated 03/05/1975 and decreed with respect to the suit

property which was sold by respondent No.6 to respondent No.5 vide sale-deed dated 22/04/1982. It was held that the suit property is an ancestral property in which the respondent Nos.1 to 3 also had a share. The learned trial Court did not pass a decree for partition on the ground that granting a decree for partition would create a fragment. In view of this finding, the sale-deed dated 22/04/1982 with respect to suit property was set aside in its entirety and respondent Nos.4 and 5 were directed to handover possession of the same to the respondent Nos.1 to 3 (plaintiffs).

7. The respondent Nos.4 and 5 had preferred appeal challenging the said decree being Regular Civil Appeal No.403/1986. The said appeal came to be dismissed in default vide order dated 19/06/2005.

8. Thereafter, the respondent Nos.1 to 3 filed execution petition for execution of the decree dated 29/04/1991. The execution petition came to be registered as Regular Darkhas No.71/2014. The execution petition was filed on 28/01/2014. In this execution petition, the respondent Nos.1 and 3 filed applications for delivery of possession of the suit property vide Exhibits 32 and 34, which came to be allowed vide orders dated 18/07/2020 and 17/12/2022 respectively. The concerned clerk attached to the office of learned Civil Judge Senior Division, Nagpur and the Assistant Superintendent (T.W.), Civil Judge

Senior Division, Nagpur furnished report stating that possession of the suit property was delivered in terms of the decree for possession.

9. As stated above, the suit property was sold by respondent No.6 to respondent Nos.4 and 5 vide sale-deed dated 22/04/1982. Respondent Nos.4 and 5 sold the property to one Kedarnath Fatehpurya vide sale-deed dated 05/05/1988. Kedarnath Fatehpurya further sold the property in favour of five individuals, namely, Manju Jain, Suman Jain, Sika Jain, Sunita Jain and Pramod Agrawal vide sale-deed dated 26/05/2006, who in turn, sold the same to M/s Greatwall Construction and Developers Private Limited vide sale-deed dated 09/10/2006. One Sunstar Overseas Limited had borrowed a loan from a consortium of Banks led by Karur Vyasya Bank Limited. Greatwall Construction and Developers Private Limited stood as guarantor for the said loan and had mortgaged the suit property towards security of the loan. It appears that the borrower had defaulted in repayment of loan, as a consequence of which, the suit property amongst other properties came to be sold in favour of the present petitioners vide sale-deed dated 31/05/2021. It will be pertinent to state that the properties including the suit property were sold in public auction conducted by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short hereinafter referred to as "SARFAESI Act"). The sale-deed with respect to Survey No.67 pertains

to entire land which includes portion of land sold by the respondent No.6 vide sale-deed dated 03/05/1975, which is held to be valid as also sale-deed dated 22/04/1982 with respect to the suit property i.e. portion of land admeasuring 2.33 acres in Survey No.67, which is held to be invalid.

10. It will be necessary to state that the sale-deed dated 05/05/1988 executed by respondent Nos.4 and 5 in favour of Kedarnath Fatehpurya is a *lis pendens* sale-deed which was executed after Regular Civil Suit No.1036/1988 was filed on 30/04/1988. The suit was directed to be allotted to the learned 4th Joint Civil Judge Junior Division, Nagpur on 30/04/1988. The order of issuance of suit summons in the said suit was passed on 13/06/1988.

11. As stated above, the said suit was decreed vide judgment and decree dated 29/04/1991 and appeal preferred against the same was dismissed in default on 19/06/2005. The petition for execution was filed thereafter on 28/01/2014. Execution of the decree passed by the learned trial Court was not stayed by the learned Appellate Court. No stay was operating while the appeal was pending. It needs to be stated that the learned Appellate Court has not passed any interim order, granting stay to the execution of the decree for possession passed by the learned trial Court.

12. It will be pertinent to state that the respondent Nos.4 and 5 had filed an objection in the execution petition on the ground that the execution petition was filed beyond the prescribed period of limitation. This objection filed vide Exh.16 came to be rejected by learned Executing Court vide order dated 01/04/2017. The contention of the respondent Nos.4 and 5 was that the decree was passed on 29/04/1991 and the execution petition was filed much beyond the prescribed period of limitation of 12 years. As regards Regular Civil Appeal No.403/1996 it was contended that the said appeal was dismissed in default on 19/06/2005 and further that while the appeal was pending no interim order was granted to stay the execution of the decree passed by the learned trial Court. It was therefore contended that the limitation of 12 years for filing execution was required to be computed from 29/04/1991 and not from 19/06/2005.

13. As stated above, the order issuing possession warrant was passed on 17/12/2022. The report dated 27/01/2023 indicates that possession of the suit property was delivered to the respondent Nos.1 to 3 on 25/01/2023. The present petitioners had lodged a complaint with the concerned Police Station stating that some persons were trying to take forcible possession of the suit property. The petitioners thereafter filed application for intervention in the execution petition vide Exh.36. The respondent Nos.1 to 3/decreed holders opposed the application by

filing reply dated 16/06/2023 vide Exh.39. The decree holders stated that they had received possession of the suit property on 25/01/2023 and accordingly purpose of filing the execution petition was served. As regards merits, it was stated that the petitioners had purchased property through *lis pendens* transferees and were therefore bound by the decree. The application for intervention came to be rejected by the learned Executing Court vide order dated 13/09/2023. The learned Executing Court had referred to the bailiff report at Exh.42, according to which, possession of the suit property was delivered on 25/01/2023. It is observed that the petitioners/intervenors did not raise any objection at the time of execution of warrant of possession. The learned Executing Court therefore rejected the application observing that the petitioners may avail other remedy by initiating separate litigation, if they so desire. Subsequently, the execution petition came to be disposed of on 20/09/2023. In such situation, the petitioners have approached this Court challenging the execution petition, the orders dated 18/07/2020 and 17/12/2022, directing issuance of warrant of possession as also the order dated 13/09/2023, rejecting the intervention application and subsequent order dated 20/09/2023 disposing of the execution petition.

14. Mr. H.R. Gadhia, learned Advocate for the petitioners has vehemently contended that the decree for possession was passed on

29/04/1991 and period of 12 years prescribed for filing execution petition as per Article 136 of the Limitation Act expired on 28/04/2003. He, therefore, contends that the execution petition filed on 28/01/2014 was hopelessly barred by limitation and was liable to be rejected as such. As regards the order dated 19/06/2005 by which Regular Civil Appeal No.403/1996 came to be dismissed in default, the learned Advocate contends that dismissal of appeal for want of prosecution will not give cause of action to the respondent Nos.1 to 3/deGREE holders for filing execution petition. He contends that the decree passed by the learned trial Court will not merge in the order dated 19/06/2005. It is his contention that the decree dated 29/04/1991 was executable and enforceable since the said date and that execution thereof was never stayed in the appeal. He, therefore, contends that limitation for filing execution needs to be counted from 29/04/1991 and not from 19/06/2005.

15. Mr. Gadhia makes a distinction between dismissal of appeal for want of prosecution and dismissal of appeal on merits. He contends that if the appeal was dismissed on merits after adjudication of the same, the decree passed by the learned Executing Court would merge with the decree passed by the learned Appellate Court and in such cases limitation for filing execution shall commence from the date of appellate judgment. He contends that in cases where appeals are dismissed for

want of prosecution, the decree passed by the learned Executing Court does not merge in the order of dismissal of appeal in default and in such cases, the limitation for filing execution is required to be computed from the date of judgment delivered by the learned trial Court.

16. Learned Advocate also contends that the learned Executing Court should have allowed the application for intervention in order to enable the petitioners to contest the matter. It is his contention that the sale-deed in favour of respondent Nos.4 and 5 was executed before issuance of suit summons. He further contends that the present petitioners have purchased the suit property in an auction under the SARFAESI Act and four sale transactions that taken place with respect to the suit property prior to execution of sale-deed in favour of the petitioners.

17. As regards his contention with respect to the execution proceedings being filed beyond period of limitation and also in support of his contention that in case where an appeal is dismissed otherwise than on merits, the decree passed by the learned trial Court becomes enforceable from the date on which it is passed, unless execution of the decree is stayed by the Appellate Court and that in case where appeal is dismissed otherwise than on merits doctrine of merger will not be applicable the learned Advocate has placed reliance on the following judgments :-

(i) State of Kerala and another Vs. Kondottparambanmoosa and others (2004) 8 SCC 65 (para 25 and 26).

(ii) Chandi Prasad and others Vs. Jagdish Prasad and others (2004) 8 SCC 724.

(iii) Sopana Rambhau Musale and another Vs. Baban Bhagwanta Khade (2006) 5 Bom CR 448.

(iv) Manohar s/o Shankar Nale and others Vs. Jaipal Singh s/o Shivrul Singh Rajput and others (2008) 1 SCC 520.

(v) Sopana Rambhau Musale and another Vs. Baban Bhagwanta Khade, judgment dated 13/07/2006 passed in Regular Civil Appeal No.9/2006 (Civil Appellate Jurisdiction at Bombay) (para 26 and 27)

(vi) Ratansingh Vs. Vijaysingh and others (2001) 1 SCC 469.

(vii) Balbir Singh and another Vs. Baldev Singh (D) through his Lrs. and others 2025 DGLS (SC) 81.

(viii) Narayan Bhau Salve (deceased) through legal heirs Balkrushna Narayan Salve and others Vs. Khandu Baburao Salve (deceased) through legal heirs Devidas Khandu Savle and others, judgment dated 09/06/2025 passed in Writ Petition No.11400/2022 (Civil Appellate Jurisdiction at Bombay).

18. In respect of his contention that the application for intervention ought to have been allowed in order to provide one opportunity to the petitioners to contest the execution proceedings, learned Advocate has placed reliance on the judgment of the Hon'ble

Supreme Court in the case of *Bhudev Mallick Vs. Ranajit Ghoshal reported in 2025 SC OnLine SC 360* (paras 53, 55 and 59).

19. Per contra, learned Advocate for the respondent Nos.1 to 3/decree holders draws attention to Section 36 of the Code of Civil Procedure and contends that the provisions of Code relating to execution of decrees are also applicable to execution of orders. The learned Advocate states that dismissal of appeal in default results in confirmation of the decree passed by the learned trial Court by the learned Appellate Court, which gives rise to a fresh cause for filing execution petition. The learned Advocate, therefore, contends that the execution was filed within limitation.

20. Another contention raised by the learned Advocate for the respondent Nos.1 to 3 is that a similar objection pertaining to limitation was raised by the respondent Nos.4 and 5/judgment debtors vide Exh. 16 and the same was rejected by the learned Executing Court vide order dated 01/04/2017. He states that this order has not been assailed either by the respondent Nos.4 and 5/judgment debtors or by the petitioners. The learned Advocate contends that the said order has attained finality and shall operate as *res judicata* between the parties. He, therefore, contends that the writ petition should be dismissed.

21. In response to the contention by the learned Advocate for respondent Nos.1 to 3 relating to *res judicata*, Mr. Gadhia learned

Advocate for the petitioners raises a contention that the *res judicata* will not be applicable when objection is raised with respect to jurisdiction of a Court to entertain a proceeding, if it is raised as a pure question of law without raising any dispute with respect to facts. Mr. Gadhia contends that limitation of Court to entertain a proceeding goes to the root of the jurisdiction of the Court. He further contends that *res judicata* is a procedural doctrine, which is in fact an extension of the doctrine of estoppel. Mr. Gadhia contends that there cannot be any estoppel against law and therefore, *res judicata* will not be applicable when objection is raised in relation to jurisdiction of a Court. In support of his contention he has placed reliance on the following judgments.

(i) *Mathura Prasad Bajoo Jaiswal and others Vs. Dossibai N.B. Jeejeebhoy*(1970) 1 SCC 613.

(ii) *Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) Through his Lrs.* (1990) 1 SCC 193.

(iii) *Union of India and another Vs. Association of Unified Telcom Service Providers of India and others* (2011) 10 SCC 543.

(iv) *Chandrabhai K. Bhoir and others Vs. Krishna Arjun Bhoir and others* (2009) 2 SCC 315.

(v) *Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh* (2005) 3 SCC 232.

(vi) *Foreshore Cooperative Housing Society Limited Vs. Praveen D. Desai (Dead) Through Legal Representatives and others* (2015) 6 SCC 412.

22. The contention of the petitioners with respect to limitation is *prima facie* acceptable. It is undisputed fact that the appeal filed by the respondent Nos.4 and 5 was not decided on merits. The appeal was dismissed in default on 19/06/2005. The decree in favour of respondent Nos.1 to 3 was passed on 29/04/1991. The execution of the decree was never stayed by the learned Appellate Court. It, therefore, appears that there was no hindrance or legal obstacle in execution of the decree. The judicial pronouncements on which the learned Advocate for the petitioners has placed reliance appear to support the said contention.

23. However, it is equally true that an objection pertaining to limitation of execution proceedings was raised by the respondent Nos.4 and 5/judgment debtors and that the said objection was rejected by the learned trial Court vide order dated 01/04/2027. The said order is not challenged by the petitioners. The respondent Nos.4 and 5 have also not challenged the said order. The petitioners are in a sense claiming the suit property through the respondent Nos.4 and 5/judgment debtors. The petitioners although have purchased the property under a statutory auction, the property came to be vested with the mortgagor through sale-deeds executed by respondent Nos.4 and 5 and other predecessor-in-title. The orders passed against the respondent Nos.4 and 5 will therefore normally operate as *res judicata* against the petitioners as well.

24. Now coming to the contention of the learned Advocate for the petitioners that *res judicata* will not be applicable to the present case since the objection pertains to the jurisdiction of the Court and that the objection is required to be adjudicated as a pure question of law without enquiry into any disputed question of fact. Learned Advocate for the petitioners has relied on the aforesaid judgments in support of his contention.

25. While dealing with the contention of the learned Advocate for the petitioners relating to *res judicata* a distinction must be borne between inherent lack of jurisdiction and error in exercise of jurisdiction. The order passed by the Court in a proceeding barred by limitation is not an order without jurisdiction. Such an order does not exhibit complete lack of jurisdiction. In this regard it would be appropriate to refer the judgments of the Hon'ble Supreme Court *Ittyavira Mathai Vs. Varkey Varkey and another*, reported in *AIR 1964 SC 907* ; *Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises (1999) 1 SCC 558* and *Indian Farmers Fertilizer Cooperative Limited Vs. Bhadra Products (2018) 2 SCC 534*. It is held by the Hon'ble Supreme Court that inherent lack of jurisdiction must be distinguished from the procedural aspects of jurisdiction, such as, territorial jurisdiction, pecuniary jurisdiction and lack of jurisdiction on account of limitation. It is held that an order passed by the competent Court in a proceeding which is filed beyond

limitation will not render the order void ab initio. It is held that such order, even if illegal, will have to be challenged to have it set aside. The earlier order passed by the learned Executing Court rejecting the objection raised by respondent Nos.4 and 5 cannot be said to be void ab initio. The objection was raised by the respondent Nos.4 and 5 with respect to limitation. The objection was not pertaining to inherent lack of jurisdiction.

26. In the considered opinion of this Court, it was necessary for the petitioners to challenge the said order and it cannot be contended that the said order can be ignored as void ab initio so as to assert that it will not be binding and shall not operate as *res judicata*.

27. In this regard it will be appropriate to refer to the judgment in the matter of ***Foreshore Cooperative Housing Society Ltd.*** (supra) relied upon by the petitioners wherein it is observed that plea of limitation and *res judicata* are jurisdictional aspects of a Court. It will be appropriate to refer to judgment of the Hon'ble Supreme Court in the matter of ***Indian Farmers Fertilizer Cooperative Limited Vs. Bhadra Products***, reported in ***(2018) 2 SCC 534***, wherein the Hon'ble Supreme Court has held that an erroneous decision on the point of limitation or *res judicata* does not oust the jurisdiction of a Court in its primary sense to render the decision in nullity in the eyes of law. It is held that when an order suffers from such defect relating to jurisdiction, the order

cannot be ignored and that it is necessary to challenge the order and have it set aside. Such a case will not be one of inherent lack of jurisdiction but of even in exercise of jurisdiction. The Hon'ble Supreme Court has placed reliance on a Constitution Bench judgment in the matter of *Ittyavira Mathai Vs. Varkey Varkey* (supra) to carve out a distinction between an erroneous jurisdiction on the point of limitation which is an error of law committed within the jurisdiction of a Court and an order which is completely without jurisdiction.

28. The term jurisdiction needs to be understood in the sense of inherent jurisdiction i.e. authority to decide and procedural aspects of jurisdiction, such as, territorial jurisdiction, pecuniary jurisdiction, limitation etc. In cases of inherent lack of jurisdiction the orders passed by the Court will be void ab initio and *non est* in the eyes of law. Such orders will not be binding on the parties even if they are not challenged. As against this, there may be orders suffering from error of jurisdiction relating to its procedural aspects, such as, territorial jurisdiction, pecuniary jurisdiction, limitation etc. which, even if, are in a sense without jurisdiction, will have to be challenged and got rid off. It cannot be said that such orders are void ab initio. It is necessary to bear in mind difference between an order completely without jurisdiction and an order which is passed in erroneous exercise of jurisdiction.

29. Now, it will be appropriate to deal with the judgments relied upon by the learned Advocate for the petitioners on the point of jurisdiction and *res judicata*. These judgments state that when point of jurisdiction is wrongly decided, the challenge to jurisdiction cannot be foreclosed by invoking doctrine of *res judicata*. The judgments unequivocally state that jurisdiction deals with authority of a Court to entertain a lis and *res judicata* is merely a matter of procedure. It will however be necessary to state that in all the judgments relied upon by the learned Advocate for the petitioners, the objection was pertaining to subject matter jurisdiction i.e. inherent jurisdiction. In that sense it is said that when a Court of law exercises the jurisdiction not vested with it or refuses to exercise jurisdiction vested with it, issue of *res judicata* will not be irrelevant.

Mathura Prasad Bajoo Jaiswal and others Vs. Dossibai N.B. Jeejeebhoy(1970) 1 SCC 613.

30. In the said judgment, the issue was pertaining to jurisdiction of Small Causes Court. In the earlier round of litigation it was held that in case of lease of land granted for construction of building the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 are not applicable. However, subsequently a proceeding was filed before the Small Causes Court invoking the provisions of the said Act. The proceeding was dismissed by the learned Small Causes Court on the

ground that in the earlier round of litigation between the same parties, it was held that jurisdiction to decide the matter was vested with the civil Court. The Hon'ble Supreme Court allowed the appeal preferred by the original applicant stating that an erroneous decision on the point of jurisdiction of a Court does not operate as *res judicata*.

31. In this context, the Hon'ble Supreme Court has held that doctrine of *res judicata* belongs to domain of procedure and that when a question of jurisdiction is erroneously decided, doctrine of *res judicata* cannot be invoked. As stated above, the question which fell for consideration before the Hon'ble Supreme Court was pertaining to inherent jurisdiction. In view of the provisions of the Bombay Rent Act, the Small Causes Court alone had the jurisdiction to decide the application. However, the Small Causes Court refused to exercise the jurisdiction holding that earlier decision between the parties wherein it was held that the civil court will have the jurisdiction and shall operate as *res judicata*. The said judgment pertains to subject matter jurisdiction or inherent jurisdiction and not procedural aspect of jurisdiction. As regards the Hon'ble Supreme Court has held that a pure question of law dealing with jurisdiction of Court will not operate as *res judicata*, if the cause of action is different. However, in the present case, the cause of action is the same i.e. execution of decree dated 29/04/1991 passed in Regular Civil Suit No.1036/1988.

**Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) Through his
Lrs. (1990) 1 SCC 193.**

32. The said judgment also deals with subject matter jurisdiction or inherent jurisdiction. The question before the Hon'ble Supreme Court was regarding jurisdiction of civil court to pass decree for eviction in light of provisions of Harayana Urban (Control of Rent and Eviction) Act, 1973. The suit property was subject to provisions of the said Act which confers jurisdiction of rent controller to pass order of eviction. However, the decree for eviction was passed by a civil court and objection raised to execution of the decree on the ground that it was *non est* and is not executable was rejected. The Hon'ble Supreme Court has held in para 27 of the judgment that since jurisdiction to order ejectment of tenant was vested with the controller, the civil court lacked inherent jurisdiction to entertain a suit for eviction and pass decree for eviction. It was held that the decree for eviction passed by the learned civil Court was a nullity and therefore, the said decree did not operate as *res judicata*. The objection to execution raised by the tenant was upheld on the ground of inherent lack of jurisdiction although the decree for eviction was not challenged.

**Union of India and another Vs. Association of Unified Telcom Service Providers
of India and others (2011) 10 SCC 543.**

33. The said judgment deals with the jurisdiction of TRAI to adjudicate correctness or validity of definition of the term, 'adjusted

gross revenue' as defined under the terms of telecom licence which were accepted by the association of telecom service providers. A dispute with respect to definition of aforesaid term was raised before the TRAI and the Tribunal constituted under the TRAI Act. It was held that although the Tribunal did not have jurisdiction to decide or adjudicate the dispute pertaining to definition of the said term, it had vide order dated 07/07/2006 decided the same. The Hon'ble Supreme Court has held that since the said order dated 07/07/2006 was without jurisdiction, it was a nullity and would not operate as *res judicata*. The said judgment also pertains to inherent lack of jurisdiction.

Chandrabhai K. Bhoir and others Vs. Krishna Arjun Bhoir and others
(2009) 2 SCC 315.

34. In the said judgment in exercise of powers under Section 302 of the Indian Succession Act, directions for enforcement of settlement terms in a probate proceedings were issued by the learned Court. The Hon'ble Supreme Court has held that Section 302 of the Indian Succession Act enabled the Court to issue directions only with respect to administration the estate of the testator in terms of the Will and not to issue directions on the basis of any settlement arrived at between the parties when the terms of settlement were at variance with the terms of Will. In this backdrop, it was held that the order directing enforcement of the settlement terms was without jurisdiction. In the

facts of the case, the Hon'ble Supreme Court has held that a testamentary Court exercising jurisdiction under Section 302 did not have jurisdiction to enforce a contract/settlement and therefore, the order was without jurisdiction. This judgment also deals with lack of subject matter of jurisdiction i.e. inherent lack of jurisdiction.

Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005) 3 SCC 232

35. In the said judgment the Industrial Court had granted relief of reinstatement to the complainant, who was engaged to perform duties akin to that of an Advocate. The Industrial Court had allowed the complaint holding that the complainant was performing tasks which were "legal clerical" in nature holding that the complainant was a workman. The Hon'ble Supreme Court held that having regard to the nature of his work, the complainant did not fall within definition of the term 'workman' and as such the order passed by the Industrial Court was without jurisdiction. In this context, it is held that since the order passed was without jurisdiction it cannot operate as *res judicata*.

Foreshore Cooperative Housing Society Limited Vs. Praveen D. Desai (Dead) Through Legal Representatives and others (2015) 6 SCC 412.

36. The said judgment deals with Section 9A of the Code of Civil Procedure which was introduced in the State of Maharashtra. Section 9A of the Code provided that in cases where application for interim relief is filed in a suit and an objection to jurisdiction of the

Court to entertain the suit is raised, the issue of jurisdiction should be tried as preliminary issue on an application made by a party to the suit. Dealing with the said provision, the Hon'ble Supreme Court has held that the question of limitation involves question of jurisdiction of a Court. It will however be pertinent to mention that the Hon'ble Supreme Court has not held that the order passed in a proceeding filed beyond limitation will be a nullity or *non est*. It is not held that the order passed in a proceeding filed beyond limitation results in an order suffering from inherent lack of jurisdiction. Most importantly this judgment refers to several other judgments including judgment in the matter of ***Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav, AIR 1966 SC 153***, wherein it is observed as under :-

“It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings.”

Thus, *res judicata* is also held to be a jurisdictional aspect of a Court.

37. It will be pertinent to state that Section 11 of the Code of Civil Procedure states that no Court shall try any suit or issue in which matter directly and substantially in issue has been decided in a former suit between the same parties or under whom they or any of them claim, if such issue was directly and substantially involved in the earlier suit or

proceedings. The language of provision itself indicates that *res judicata* also deals with aspect of jurisdiction. It prohibits the Court from entertaining a *lis* which is already set at rest by earlier adjudication. However, both limitation and *res judicata* are procedural aspects of jurisdiction. They do not deal with the subject matter jurisdiction or inherent jurisdiction of a Court. It will be appropriate to refer to a recent decision of the Hon'ble Supreme Court relating to *res judicata* in the case of ***Puja Ferro Alloys P. Ltd Vs. State of Goa and others***, reported in **2025 SCC OnLine SC 326**, wherein it is held that principle of *res judicata* is essential to accord finality to judicial decision in order to ensure that some issues are not repeatedly agitated by litigating parties. It is held that doctrine of *res judicata* is based on public policy and justice. It is reiterated that plea of *res judicata* although a technical plea, is based on public policy. The general principle that *res judicata* applies to determination of issue in the same proceedings is also reiterated.

38. The contention of the learned Advocate for the petitioners that the order rejecting objection filed by the respondent Nos.4 and 5 will not operate as *res judicata* is therefore liable to be rejected.

39. Having said so, this Court prima facie finds itself in agreement with the contention of the learned Advocate for the petitioners that the issue of limitation may not have been correctly

decided by the learned Executing Court vide order dated 01/04/2017 passed below Exh.16.

40. The judgments relied upon by the learned Advocate for the petitioners indicate that the order dismissing appeal in default is not enforceable order and that a decree passed by the learned trial Court does not merge in such said order and further that in case where the Appellate Court does not grant stay to execution of decree passed by the trial Court the decree continues to be enforceable and executable during the pendency of the appeal.

41. As stated above, the petitioners have purchased the suit property in public auction under SARFAESI Act. There are four preceding sale-deeds with respect to suit property before the petitioners have purchased the same in public auction. In the considered opinion of this Court, the learned Executing Court should have allowed the application for intervention filed by the petitioners. The learned Advocate for the petitioners is justified in his contention that the learned Executing Court should have allowed the application for intervention so as to enable the petitioners to move appropriate application/s and/or objection/s. The contention raised by the learned Advocate for the petitioners is supported by the judgment of the Hon'ble Supreme Court in the matter of *Bhudev Mallick* (supra). It will be pertinent to state that although the first sale-deed dated 05/05/1984 executed by respondent Nos.4 and 5 is

after filing of the suit i.e. on 30/04/1988, it is prior to the date on which suit summons were ordered to be issued in the said suit i.e. 13/06/1988.

42. The petitioners had appeared before the learned Executing Court without undue delay after the possession warrant was executed or allegedly executed. The possession warrant is stated to be executed on 25/01/2023 and the petitioners have filed the application for intervention on 27/03/2023. Having regard to the aforesaid coupled with the fact that the respondent Nos.1 to 3/decree holders have filed execution proceedings for execution of decree dated 29/04/1991 on 28/01/2014, after period of around 23 years, in the opinion of this Court the learned Executing Court should have been considerate in permitting the petitioners to intervene in the matter. The petitioners could have raised appropriate objections including filing of an application for review in order to challenge the order dated 01/04/2017 rejecting the application pertaining to limitation.

43. The learned Executing court should have considered that although the possession warrant was stated to be executed, the order of restitution could have been passed in favour of the petitioners, if the situation warranted.

44. In view of the aforesaid, the writ petition is partly allowed by quashing and setting aside the order dated 13/09/2023 passed by the learned 12th Joint Civil Judge Senior Division, Nagpur on application at

Exh.36 in Regular Darkhast No.71/2014 as also the order dated 20/09/2023 passed by the learned 12th Joint Civil Judge Senior Division, Nagpur below Exh.1 in Regular Darkhast No.71/2014. Application at Exh.36 is allowed.

45. Liberty is granted to the petitioners to file application for review of order dated 01/04/2017 passed below Exh.16 along with application for condonation of delay or to take other appropriate steps for challenging the said order. The parties are directed to appear before the learned Executing Court on 15/10/2025. The parties to note that separate notice for appearance will not be issued.

46. Rule is made absolute in the aforesaid terms. No order as to costs.

(ROHIT W. JOSHI, J.)