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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1700 OF 2015
WITH
WRIT PETITION NO.1283 OF 2015

M/S FIDALI AND SONS, DHULE
VERSUS
THE POONA DIO SEASON CORPORATION PVT LTD, DHULE AND
OTHERS

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Advocate for Petitioners : Mr.V.J.Dixit, Senior Advocate a/w Mr.Badakh
Vishal S.

Advocate for Respondents : Mr.P.V.Mandlik, Senior Advocate a/w Mr.K C
Sant For R/1.

Mr.A.R.Syed h/f Mr.Brahme Shailesh P. for R/2 and R/4.

Mr.Girish S. Rane for R/5(a)

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 29th June, 2015

Per Court:

1 I have heard the learned Advocates appearing on behalf of the
respective parties.

2 During the course of their submissions, it is pointed out that
this Court had an occasion to deal with the controversy between the
parties in relation to Special Darkhast No.28/2012, in Writ Petition

No.6528/2013. The application Exhibit-45 filed by the Petitioner by way of objections in Special Darkhast No.28/2012 is still pending adjudication.

3 This Court, while deciding Writ Petition No.6528/2013 has passed an order on 21.08.2013, dismissing the petition, but making certain observations in paragraphs 3 and 4, which read thus:-

“3. *Mr. Brahme invited my attention to the suit instituted by the 1st respondent, being Special Civil Suit No. 62/1969, against respondent nos.2, 3, 4 and the petitioners herein. In that suit, compromise was arrived at between respondent no.1 and respondent no.2 on 30th August 1971 (Exhibit "D" to the petition). By order dated 30th August 1971, the learned trial Judge recorded the compromise in terms of Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (For short, "the Code"), and ordered passing of decree in terms of compromise terms and attached map to form part of the decree. Mr. Brahme submitted that the petitioners are not party to the said compromise decree and, therefore, it is not binding on them, as also the said decree cannot be executed against the petitioners. He submitted that the petitioners made application at Exhibit 49 for framing the issues, as suggested at Exhibit 50/C, dated 25th February 2013, and Exhibit 51/D dated 5th March 2011. By the impugned order, the learned trial Judge rejected the application on the ground that the issues, as suggested by the judgment debtors, cannot be agitated in this proceedings which is filed for execution of the decree.*

4. *I do not find that the learned trial Judge committed any error in declining to frame the issues as suggested by judgment debtor nos.4 to 6. The learned trial Judge has observed in the impugned order, that in terms of Section 47 of the Code, the executing court is*

obliged to consider all the question arising between the parties to suit in which decree was passed. Obviously, it will also include the objections raised by the petitioners as to binding nature of the decree passed against them, as also whether it can be executed against the petitioners.”

4 It is apparent that this Court expects the Executing Court to consider all the questions arising between the parties to the suit in which the decree was passed, including the objections raised by the Petitioners as to the binding nature of the decree passed against them, as also, whether, it can be executed against the Petitioners.

5 The execution proceedings are still pending and so is Exhibit-45 which contains the objections of the Petitioners in this petition.

6 Respondent No.5(a) herein, namely, Harish Chaganlal Chavan is the legal heir of the deceased Chaganlal Uddhavji Chavan along with Lilavati Chaganlal Chavan. The deceased Chaganlal was Judgment Debtor No.2.

7 An affidavit in reply has been filed by Respondent No.5(a) i.e. legal heir of the deceased stating therein that pursuant to the warrant of possession issued by the Executing Court dated 30.08.2014 impugned in

Writ Petition No.1700/2015, the possession is already handed over in favour of Respondent No.1 Trust. It is further stated that the affiant (Respondent No.5(a)) has no grievance in Special Darkhast No.28/2012.

8 Shri Dixit, submits that the issue as regards handing over of possession will also have to be gone into by the Executing Court. He has prayed for interim protection.

9 Considering the observations as above and the directions given by this Court in the earlier petition in paragraph 4 reproduced above, I am not required to go into the matter as to whether, Respondent No.5(a) has properly handed over possession to Respondent No.1 or not.

10 Shri Mandalik submits that the property, the possession of which has been handed over by Respondent No.5(a) to Respondent No.1, was not in possession of the Petitioners. Respondent No.1 has already received possession of the said Shop Nos.1 and 2. Hence, the status-quo as existing today be maintained.

11 It is in the above backdrop I am not adverting to the host of factors canvassed by the learned Senior Advocates on behalf of the contesting parties since this Court had made it clear that the Executing

Court would decide all the questions in Special Darkhast No.28/2012 in accordance with law.

12 In the light of the above and without considering the challenge to the impugned order dated 30.08.2014 as well as the impugned judgment and order dated 15.11.2014, these Writ Petitions are disposed of in terms of the observations of this Court in paragraph 4 reproduced herein above.

13 Needless to state, the Executing Court shall decide the execution proceedings in accordance with the procedure laid down in law.

14 Needless to state, in the light of the observations of this Court in paragraph 4 reproduced above, once all the questions are decided between the parties by the Executing Court, the litigating sides will have their legal rights with regard to the result of the execution proceedings strictly in accordance with the provisions of law.

(RAVINDRA V. GHUGE, J.)