

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

Civil Revision Application No. 166 of 2014

Sitaram S/ Madhavrao Ugale
And Others.

.. Petitioners.

Versus

Gangabai W/o Sadashiv Ugale
And Others.

.. Respondents.

Shri. C.R. Deshpande, Advocate, for petitioners.

Shri. M.P. Kale, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 4th DECEMBER 2015

ORDER:

1) Heard learned counsel for the petitioners. It appears that order made in Regular Darkhast No.12 of 2012 presently pending in the Court of the Joint Civil Judge, Junior Division, Pathri on application at Exhibit 36 is challenged in the present proceeding. In the said proceeding, present petitioner, judgment debtor had filed application under section 47 of the Civil Procedure Code for setting aside the judgment and decree by contending that it was *ex-parte* decree.

2) After hearing the judgment debtor the executing Court held that in execution proceeding such prayer cannot be considered. Such application cannot be filed under section 47 of the CPC. It can be said that application ought to have been filed under order 9 rule 13 of the CPC and it could have been a separate and independent proceeding. Thus it can be said that no error is committed by the executing Court by rejecting the application.

3) In the result, the petition stands dismissed with aforesaid liberty.

Sd/-
(T.V. NALAWADE, J.)

rsl