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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10439 OF 2014

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| 1. | Suresh s/o Murlidhar Khemnar
Age – 51 years, Occ – Service | PETITIONERS |
| 2. | Mahesh s/o Subhash More
Age – 38 years, Occ – Service | |
| 3. | Sau. Shakuntala Balasaheb Deshmukh,
Age – 55 years, Occ – Service | |
| 4. | Sunil s/o Madhav Aher
Age – 50 years, Occ – Service | |
| 5. | Dattatraya s/o Waman Aher,
Age – 64 years, Occ – Nil | |

All R/o Girme Chawl, Near Kanya
Vidya Mandir, Kopargaon,
Taluka – Kopargaon, District – Ahmednagar

VERSUS

- | | | |
|---------|--|-------------|
| 1. | Shamlal Chunilal Thole
Since deceased through L.Rs | RESPONDENTS |
| 1A. | Kalyanmal Shamlal Thole
Age – 72 years, Occ – Business
R/o Godam Galli, Kopargaon
Taluka – Kopargaon, District – Ahmednagar | |
| 1B. | Nemichand Shamlal Thole
Since deceased through L. Rs. | |
| 1B (I) | Sunil Nemichand Thole
Age – 44 years, Occ – Business | |
| 1B (II) | Smt. Lalitabai Nemichand Thole,
Age – 64 years, Occ – Household,

Both R/o Godam Galli, Kopargaon, | |

Taluka-Kopargaon, District – Ahmednagar

- 1C. Pemchand Shamlal Thole
Age – 68 years, Occ – Doctor
- 1D. Rameshchand Shamlal Thole
Age – 66 years, Occ – Lawyer & Agri.
- 1E. Ajhit Shamlal Thole,
Age – 60 years, Occ – Business

R. Nos. 1C to 1E R/o Godam Galli,
Kopargaon, Taluka-Kopargaon,
District – Ahmednagar

- 1F. Ratnamala Sureshkumar Patni,
Age – 54 years, Occ – Household
R/o Pipli Bazar, Indore (MP)

- 2. Hukumchand Chunnilal Thole,
Since deceased through L. Rs.

- 2A. Vijaykumar Hukumchand Thole
Age – 58 years, Occ – Agriculture
R/o Godam Galli, Kopargaon,
Taluka – Kopargaon, District – Ahmednagar

- 2B. Smt. Manibai Hukumchand Thole,
Age – 82 years, Occ – Household
R/o Godam Galli, Kopargaon,
Taluka – Kopargaon, District – Ahmednagar

- 2C. Sau. Jyoti Padmakumar Bakliwal,
Age – 64 years, Occ – Household
R/o Jayanti Society, Plot No. 209, 210,
Kandi Chowk, Nagpur

- 3. Raghunath Hanumantrao Girme,
Since deceased through L.Rs.

- 3A. Rajendra Raghunath Girme,
Age – 68 years, Occ – Agriculture

- 3B. Uday Raghunath Girme,

Age – 60 years, Occ – Agriculture

- 3C. Mohan Rghunath Girme,
Age – 66 years, Occ – Agriculture

R. Nos. 3A to 3C R/o Girme Chawl,
Kopargaon, Taluka – Kopargaon,
District – Ahmednagar

4. Bhagchand Dhanraj Thole,
Since deceased, through L.Rs.

- 4A. Kailaschand Bhagchand Thole
Age – 58 years, Occ – Business

- 4B. Prakashchand Bhagchand Thole
Age – 56 years, Occ – Business

Both R/o Thole Niwas,
Opp Panchayat Samiti Office,
Kopargaon, Taluka – Kopargaon,
District – Ahmednagar

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Mr. V.D.Hon, Sr Advocate i/b Mr.A.V.Hon, Advocate for petitioners
Mr. A. S. Bajaj, Adv. for R-1A, 1B (i), 1B (ii), 1C to 1F, 2A to 2C
Mr. Subodh P. Shah, Advocate for respondents No. 4A and 4B
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[CORAM : SUNIL P. DESHMUKH, J.]

RESERVED ON : 1st OCTOBER, 2015

PRONOUNCED ON : 24th NOVEMBER, 2015

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally, with consent.
2. This writ petition was earlier heard, while the matter appeared on board on 1st October, 2015, the parties wished to

clarify on certain factual aspects and also wished for further opportunity of hearing. Accordingly, the parties were heard and the matter had been reserved for judgment.

3. The petitioners are before this court, purporting to be aggrieved by order dated 9th April, 2013 on applications Exhibits-89 and 90 in Regular Darkhast No.187 of 1958 pending before Joint Civil Judge, Junior Division, Kopergaon, District – Ahmednagar and the order on Exhibit-252 dated 10th June, 2013 seeking review / recall of the order dated 9th April, 2013.

4. While initially the petitioners purported to challenge only the order on Exhibit-252 dated 10th June, 2013 referred to hereinabove, however, during pendency of writ petition, the petition had undergone some amendments embracing orders passed on Exhibits-89 and 90 and also seeking directions to decide application Exhibit-237 in accordance with law.

5. Learned senior advocate Mr. Hon for the petitioners with emphasis refers to order dated 5th May, 2012 passed by Hon'ble Single Judge (Hon'ble Shri S. V. Gangapurwala, J.) in three writ petitions bearing No.3291 of 2012, 3295 of 2012 and 3296 of 2012 and lays heavy stress on following observations in said order.

“11. As all the contentions raised by the respective parties have not been considered by the Court while deciding the said applications, I am inclined to relegate the parties to the Executing Court with further directions to the Executing Court to decide the said objections/applications filed by the petitioners herein after considering all the record and contentions put forth by them, considering the subsequent events that have taken place pursuant to the various litigations and instruments being executed. The Court shall consider the effect of the same.

12. The Executing Court shall also decide the objections filed by the petitioners U/O 21 Rule 97 of the Code of Civil Procedure below Exhibit 81 and 90 on its own merits.

13. Till the applications of the petitioners below Exhibit 210 and 212, so also the objections of the petitioners below Exhibit 219 and 221 and U/O 21 Rule 97 filed below Exhibit 81 and 90 are decided on merits, the order passed below Exhibit 140 shall not be operative and shall not take effect. Further course of execution would depend upon the decision of applications below Exhibit Nos. 210, 212, 219, 221 and objection filed U/O 21 Rule 97 of the Code of Civil Procedure below Exhibit 81 and 90, till the same is decided the execution shall not be proceeded further.

14. In view of the above, the impugned orders passed below Exhibit 210, 212, 219 and 221 are quashed and set aside, with directions that the same shall be decided afresh after considering all the contentions of the parties, so also the objection U/O 21 Rule 97 of the C. P. C filed below Exhibit 81 and 90.

Rule is accordingly made absolute in above terms, however, with no order as to costs.

15. Taking into account the fact that the execution is pending since 1958, the Executing Court shall decide the said applications and objections below Exhibit 81 and 90 as expeditiously as possible and preferably within a period of six (6) months from today.”

6. Subsequently, error appearing in respect of reference to Exhibit-81 appearing in aforesaid judgment had been corrected as Exhibit-89 under order dated 16th May, 2012 of the high court.

7. He contends that after the matter had been remanded, the execution proceedings went on for quite a while. During its course, application Exhibit-237 came to be filed for letting an opportunity to the applicants to adduce evidence.

8. He contends that having regard to aforesaid, petitioners had been under impression that it is Exhibit-237 that will have to be and would be decided first and had accordingly been addressing the matter before the court and they had not, under the circumstances, addressed themselves on applications Exhibits-89 and 90. However, to their shock and surprise orders came to be passed on applications Exhibits-89 and 90 and as such, they had moved application Exhibit-252 which too came to

be dismissed.

9. It is being submitted that applications Exhibits-89 and 90 had been decided by the predecessor presiding officer of the one, who had decided application Exhibit-252, and as such, simply relying on notings on proceedings sheet, application Exhibit-252 has been decided, disregarding submissions and arguments on behalf of the petitioners. He, therefore, submits that the impugned orders are untenable and petitioners deserve an opportunity to address themselves on applications Exhibits-89 and 90.

10. Mr. Hon, learned senior advocate appearing on behalf of the petitioners, highlighted the directions of this court in three writ petitions placing emphasis particularly on paragraphs No. 8 to 11, which according to him, necessitate that the executing court ought to have taken into account all the record and contentions put forth, considering the subsequent events that had taken place pursuant to various litigations and instruments being executed. According to him, the impugned orders nowhere reflect that any such matter has been considered at all by the executing court. He submits that had an opportunity been given to the petitioners to address on Exhibits-89 and 90, it would

have found place in the impugned orders. The petitioners and their advocate, taking into account that some other applications were being addressed on, had not considered that applications Exhibit-89 and 90 would be decided even before other applications, particularly Exhibit-237 wherein a request had been for an opportunity to third persons to adduce evidence. He submits that it was but natural to expect that an order on Exhibit-237 would precede orders on Exhibits – 89 and 90 having regard to relevant provisions under Order XXI relating to execution particularly Rules 97, 98, 99 and 101 of the Civil Procedure Code. He submits that various contentions have been raised in Exhibit-90 and those ought to have been considered. According to him, perusal of impugned orders would not depict consideration of the relevant contents of the same. He submits that this is a case of gross failure of adherence to the principles of natural justice and further that the orders have been passed without reference to the considerations which have weighed while this court had remanded the matter for re-consideration.

11. Mr. Hon, learned senior advocate submits that in the circumstances, it was necessary to let the petitioners have an opportunity to support their claim with some material. However, such an opportunity as sought under Exhibit-237 has not been

afforded to the petitioners.

12. Mr. Bajaj, learned advocate appearing for legal heirs of respondents No.1 and 2 refers to the historical background as under:

13. Regular Civil Suit bearing No. 31 of 1946 was filed by Dhanraj Gokulchand Thole, partner of Chunilal Rajaram Firm, against Reghunath Hanmantrao Girme and others, for possession of land bearing CTS No. 1707 (Old Survey No. 106B) admeasuring 205' X 80'. The suit was decreed in 1949, directing aforesaid Raghunath Girme to hand over possession, holding him to be trespasser. Regular Civil Appeal No. 395 of 1949 filed by Raghunath Girme had failed and second appeal No. 1430 of 1952 at his instance before the High Court too met with the same fate under order dated 28th March, 1955.

14. Decree in regular civil suit No. 31 of 1946 was put in execution, under aforesaid *Darkhast* No.187 of 1958. The decree had been sent to Collector for execution. The collector had reported back stating that there were huts on the plot, which would have to be removed. Under order dated 19th February, 1971, the executing court directed removal of the huts and handing over of possession of suit property to the decree

holders, since the huts had come on the scene after the decree.

15. In 1973 by filing an application Exhibit-66 one Murlidhar Shankar Khemnar, who was father of petitioner No.1, had opposed execution of the decree.

16. Regular Civil Suit No. 101 of 1976 had been filed by Ghumaji Narayan Gavli and sixteen others, who happen to be predecessors of the present petitioners, save petitioner No.5. In the suit it had been contended that they are tenants of Judgment Debtor Girme and had been paying rent to him. Subsequently, the plaintiffs in Regular Civil Suit No. 101 of 1976 filed an undertaking that they would not object to execution of decree in Regular Civil Suit No. 31 of 1946. In 1977, Regular Civil Suit No. 101 of 1976 was dismissed for want of prosecution.

17. However, before its dismissal, said Ghamaji Gavli and eleven others had instituted another suit bearing Regular Civil Suit No. 765 of 1976 seeking declaration that decree under execution is not binding on them. Subsequently, plaintiffs No.2 to 12 came to be deleted from the array of plaintiffs with permission to file fresh suits.

18. Regular Civil Suit No. 35 of 1977 came to be filed by

predecessor of one of the petitioners, Regular Civil Suit No. 46 of 1977 was filed by Murlidhar Khemnagar and Regular Civil Suit No. 47 of 1977 was filed by Murlidhar Barhate. All aforesaid suits were dismissed around 1982. Regular Civil Appeals preferred therefrom were also dismissed in 1987.

19. Court appointed Commissioner Mr. N. B. Gupta had expressed his inability to hand over possession due to resistance by obstructionists.

20. In 1994, seventeen persons including present petitioners No.1 and 5 filed application Exhibit-89 in Regular *Darkhast* No. 187 of 1958 for impleading themselves in the *Darkhast* and had also filed Exhibit-90 purporting the same to be under Order XXI, Rule 97 of the Civil Procedure Code.

21. In 2010, court receiver Mr. Kalyanmal Thole filed application Exhibit-129-A placing on record various sale deeds executed by another receiver without permission of the court.

22. Exhibit-140 had been moved in 2010 for handing over possession by removing encroachments. In December, 2010 the Court had passed an order directing collector to remove all the encroachments and give possession of the property to decree

holders.

23. Court receiver Bhagchand Thole filed applications Exhibits-210 and 212 praying for recall of the order passed on Exhibit-140 and stay to the proceedings.

24. Applications, Exhibits-219 and 221 were filed by purchasers from Bhagchand Thole. On 29th March, 2012, Exhibits, 210, 212, 219, 221, 227 along with Exhibit-89 and 90 were rejected.

25. As such, different sets of persons had filed three writ petitions. Writ petition No.3291 of 2012 had been filed at the instance of seven persons, who sought themselves to be impleaded in the Regular *Darkhast* proceedings comprising present petitioners No.1 and 5. Writ petition No. 3295 of 2012 was filed by the partner of the firm, to whom in subsequent partition western portion had been given under the court decree. Writ petition No.3296 of 2012 had been filed by the persons who happened to be purchasers of the property from court receiver.

26. Mr. Bajaj, learned advocate appearing for legal heirs of respondents No.1 and 2 – decree holders contends and submits that present writ petition has been moved with an underlying

purpose to further procrastinate execution of decree passed way back in 1955. He submits that for over sixty years the respondents have kept at bay the fruits of the litigation to be enjoyed by the decree holders. He submits that there is no substance in submissions advanced on behalf of the petitioners. He submits that the matter before the executing court was all along being kept on all relevant dates for hearing on applications Exhibits-89 and 90. It is amply borne out from the notings in the proceedings sheet. He submits that this court had never directed the executing court to let the judgment debtors adduce evidence. However, with a view to prolong and thwart execution of the decree, an application had been moved, by third persons (not petitioners) seeking to adduce evidence. According to him, no evidence is possible now, at the behest of the petitioners, for, in substantive matters, their rights in respect of the property concerned stand adjudicated and decisions are final. They have no right, whatsoever, of any nature in respect of suit property.

27. Mr. Bajaj, learned advocate, states that application Exhibit-237 is not by the petitioners, and that it is by some other persons. He further refers to that it has already been pointed out that the petitioners trace their claim to their predecessors. It has emerged on record that there is previous litigation at the

instance of their predecessors had failed. Under the circumstances, present proceedings are nothing but abuse of process of law. He, therefore, submits that there is no substance in the contention that, they had not been afforded opportunity on Exhibits - 89 and 90 and application Exhibit-237 ought to have been decided first.

28. He submits that the relevant extract of the proceedings sheet (*Roznama*) would show that on 11th January, 2013, it is shown that advocates of the decree holders and judgment debtors were heard and that there had been adjournment application on behalf of the judgment debtors for 'say' in respect of application Exhibit-242. The matter was as such, adjourned to 18th January, 2013. On 18th, the matter stood adjourned to 2nd February, 2013. On 2nd, advocates of decree holders, judgment debtors and *third persons*, namely advocate Korhalkar, advocate P. C. Dhadiwal, advocate S. M. Wagh and advocate V. G. Gawande advanced arguments and the matter was posted for orders on applications Exhibit-89, 90, 220, 221, 237 and 242. The matter was posted for orders on 22nd February, 2013. From 22nd, it got adjourned for very said purpose up to 9th April, 2013, all along proceedings sheet depicting the same. On 9th April, 2013, applications Exhibit-89 and 90 came to be rejected.

Thereafter, the matter was posted for orders on Exhibit-220, 221, 237 and 242 to 25th April, 2013. On 25th April, 2013 the matter was adjourned for said purpose to 30th April, 2013 and then to 4th May, 2013 and then to 17th June, 2013. On 8th May, 2013, the purported *third persons* had applied for taking application Exhibit-247 on board. By application Exhibit-248, they requested to set aside and cancel orders on applications Exhibit-89 and 90 and the matter accordingly was adjourned to 17th June, 2013.

29. He submits that there is no substance in the submissions that the petitioners could not address the court on applications Exhibits-89 and 90, for, at least on four intervening dates the petitioners had not conceived a plea like the one which is presently being taken, since all along they knew and they understood that the matter had been heard on 2nd February, 2013 on applications Exhibit-89 and 90 with other applications as well. Therefore, they had not objected to recording of the notings in respect of various dates and also to notings, which were appearing after 8th April, 2013 for orders on other exhibits viz., 220, 221, 237 and 242. Had they not really addressed the court on applications Exhibits-89 and 90 on 2nd February, 2013, they would have objected to putting up of the matter for orders

on said applications Exhibits-89 and 90 and others. During the period 2nd February, 2013 to 8th May, 2013, on none of the occasion, at least around on eleven dates, such a plea or objection had been taken.

30. Mr. Bajaj, learned advocate in respect of the merits of the case, submits that application Exhibit-89 – which is for impleading applicants as parties to the Regular *Darkhast* No. 187 of 1958, is wholly misconceived. The same is not tenable at all. Order I, Rule 10 of the Civil Procedure Code would not apply to execution proceedings. He further submits that they cannot be *third persons* to the proceedings, the petitioners trace right through predecessors and the decision in the previous litigations by the predecessors and their conduct hits the applications Exhibits-89 and 90 by the principles of *res judicata* and *estoppel*.

31. He submits that substantive suits by the predecessors of the petitioners have been dismissed. Their attempts to intervene and interrupt the execution proceedings have proved to be futile.

32. He, therefore, submits that there is no substance in the allegations now being hurled against the conduct of the proceedings by the executing court.

33. Learned advocate to support his submissions refers to (1977) 4 SCC 467 "*T. Arivandandam V. T. V. Satyapal & Another*", and submits that it is quite blatant way in which proceedings are being conducted by the petitioners and submits that their applications deserve to be thrown out at the threshold, for it is manifest that those are vexatious and meritless. They have absolutely no right whatsoever in the suit properties. He points out that the Supreme Court has very sternly observed that an attempt by clever drafting creating illusion of a cause of action shall be nipped in the bud at the first hearing and, the executing court has precisely considered that the applications are vexatious and meritless. He submits that the Supreme Court has further observed that such litigations need to be shot down at the earliest stage. Applications Exhibit-89 and 90 are flagrant misuse of mercies of the law.

34. Mr. Bajaj further refers to (1998) 3 SCC 723 "*Silverline Forum Pvt. Ltd., V. Rajiv Trust and Another*". With the aid of the same, he submits that the executing court is empowered to decide whether the so called obstruction or resistance is legal and proper and whether the persons at whose instance resistance and obstruction is there are bound by the decree. He refers to paragraphs No. 12 and 14 of said judgment reading thus -

“12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the court is not obliged to determine a question merely because the resistor raised it. The questions which 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 resistor 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 resistor 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 executing court can decide whether the resistor or obstructor is a person bound by the decree and he refused 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. Court can make the adjudication on admitted facts or even on the averments made by the resistor. Of course the Court can direct the parties to adduce evidence for such determination. If the Court deems it necessary.”

35. He submits that the court can make adjudication on the facts and on averments made by the parties. In this case, it cannot be gainsaid that the petitioners claim the property under the same rights as their predecessors had attempted to, which had failed.

36. Mr. Bajaj, then refers to 2014 (1) Mh.L.J. 624 "*Satyawati V. Rajinder Singh and Another*" and refers to paragraphs No.13 to 18 from the same.

37. He as such, submits that having regard to the state of affairs as emerging in the present matter, almost sixty years have lapsed and yet the decree holders are not in a position to enjoy the fruits of success. He, therefore, submits that since the objections are *ex-facie* untenable the proceedings and applications being frivolous should be dealt with firm hand and no leniency deserves to be shown in the matter.

38. Learned advocate has also placed reliance on a decision reported in 2007 (1) Mh.L.J. 402 "*Jagdish Motilal Joshi V. Chandarpal Tulsiram Bhola & Another*". He relies on head note, perhaps to impress upon that the petitioners No. 2 to 4 are strangers and not related to the judgment debtors and are even not applicants in Exhibits concerned. It is also submitted that the objections /

petitioners cannot be claimed to have even primary title in their own right and on their own saying, they deserve to be non suited. It is to emphasize that full fledged inquiry in such matters would not be warranted and contrary view would amount to permitting abuse of process of law and when the objectors state that they claim through unsuccessful predecessors, such an exercise is absolutely unnecessary and therefore, the contention that Exhibit-237 was heard and no orders have been passed on the same is of little significance.

39. Mr. Bajaj further purports to rely on a decision in second appeals bearing No.438 of 2010 and 462 of 2010 of this court. He refers to said judgment in order to further emphasizes that previous litigation cannot be considered as collusive and that the decisions have been rendered on merits.

40. Mr. Shah, learned advocate appearing for respondent No.4 contends that the order of this court in writ petitions No.3291 of 2012 and other companion matters takes within its fold also considerations of fact with regard to partition of the property amongst partners of the partnership firm and that western portion coming to the share of respondent No.4. According to him, said considerations also do not appear to have been

addressed to in the impugned orders.

41. Mr. Bajaj, learned advocate appearing for respondents No.1 and 2 counters aforesaid submission of Mr. Shah stating that as far as these submissions of Mr. Shah are concerned, application in respect of the same is still pending and those have little relevance so far as present matter is concerned.

42. Perusal of application Exhibit-89 shows that it has been filed by seventeen persons, including petitioner No.1 as applicant No.1, father of petitioner No.2 namely Subhash Shankarrao More as applicant No.2, petitioner No.4 appears to be brother of applicant No.5 and petitioner No.5 appears to be applicant No.6. Petitioners No.2 to 4 appear to be complete strangers who are not parties to Exhibit-89 . Exhibit-89 refers to that the applicants are not parties to the decree and that they claim that they are in possession of the suit property as tenants and licencees from even before the date of decree. The application appears to have been moved on 29th August, 1994. Age shown of petitioner No.1 then in the application is 32 years. Petitioner No.2 Madhav, petitioner No.3 Shakuntala and petitioner No.4 Sunil are not parties to the application. Age of petitioner No.5, who is applicant No.6 is stated to be 42 years in the application. It

appears that petitioner No.5 had instituted a suit, which had met with failure. Thus, it appears that the very application is based on a claim which *ex-facie* appears to be untenable. Under the circumstances, the writ petition by petitioners No.2 to 4 is absolutely untenable and their impleading in no way can be warranted. As far as petitioner No.1 is concerned, basis of his claim is untenable in background of events referred to. The claim by petitioner No.5 had been adjudicated.

43. Application Exhibit-89 had been moved purportedly under Order I, Rule 10 and Order VI, Rule 17 of the Civil Procedure Code. While it would be required to be considered that Order I, Rule 10 of the Civil Procedure Code is in respect of suits, whereas application Exhibit-89 has been moved in execution proceedings. Learned judge has accordingly considered that Order I, Rule 10 of the Civil Procedure Code has no application in the proceedings and that provision of Order VI, Rule 17 would not warrant tenability of such application in the proceedings where execution is sought by removing encroachment. In the circumstances, both the provisions referred to in Exhibit-89 have no application. Reasons appearing under the order on Exhibit-89 appear to carry lot of weight.

44. Application Exhibit-90 had been filed by the very same persons, who are applicants in application Exhibit-89. Exhibit-90 had been filed on the basis that the applicants are tenants / licencees and that they are in possession of suit property from even before the date of decree and that suit survey No. 1707 is large area and these persons are in possession of some portion of the suit property and, therefore, without impleading them, the execution could not be carried forward and that they are residing there having water and electricity connections. They further purported to point out some flaws in the application for execution. The applicants are not parties to the execution proceedings, they have resisted execution claiming that they are in *bonafide* possession and contend that at the most the decree holders would be able to seek symbolic possession. It is contended in the application that the application be considered pursuant to Order XXI, Rule 97 and Rule 101 along with section 151 of the Civil Procedure Code. They further refer to that they being in possession of the suit property from seventy years and that various other persons along with children and woman folk are residing there, orders should not be passed without hearing them.

45. The executing court has referred to that the applicants in

application Exhibit-90 have not stated at all as to from whom they claimed tenancy or licence since seventy years. They have not claimed rights to any particular or specific origin or through whom they are claiming rights. The application has been vague in nature. The application does not give even a hint or indication of assertion of any independent right other than through the judgment debtors. The executing court, as such, had considered that the application cannot be said to be referable to Order XXI, Rule 97 or for that matter Rule 99 of the Civil Procedure Code, which may call for an independent inquiry.

46. On the other hand, respondents No.1 and 2 have referred to various factual aspects, preceding orders passed on applications Exhibits – 89 and 90, bringing to the fore that the writ petition is untenable at the behest of petitioners No.2 to 4 and that as far as the same by petitioners No.1 and 5 is concerned, it emerges that there is no basis for the claim being made by petitioner No.1 and that the claim of petitioner No.5 had already been adjudicated.

47. It has to be considered that as has been stated herein above, petitioners No.2 to 4 were not parties to applications Exhibits – 89 and 90. Petitioner No.1 is applicant No.1, father of

petitioner No.2 is applicant No.2, petitioner No.4 is brother of applicant No.5 and petitioner No.5 is applicant No.6. It may be referred to that an application had been moved by seventeen persons and from the same, only petitioners No.1 and 5 had moved this court. In the present writ petition as well, the emphasis is on alleged procedural irregularities. The petitioners have not been able to trace origin of their claimed rights. The executing court, as such, can hardly be faulted with for considering the application as vague.

48. Having regard to submissions on behalf of respondents No.1 and 2, which are not repelled by any cogent material by the petitioners, it cannot be said to be a case that any question would legally arise for determination between the parties. For aforesaid, the judgment relied upon on behalf of respondents No.1 and 2, *Silverline Forum Pvt. Ltd., (supra)* can be taken into account, as has been referred to hereinbefore and would apply in the present facts and circumstances. In the circumstances, the executing court had not been under any obligation to determine a question merely for the applicants in application Exhibit-90 have tried to resist the decree by filing the same.

49. Notings on the proceeding sheet had been depicting that

the matter is being posted for orders on applications Exhibits – 89 and 90, as referred to in the proceeding sheet and has been specifically referred to and contended on behalf of respondents No.1 and 2.

50. The Hon'ble single judge of this court in three writ petitions bearing No. 3291 of 2012, 3295 of 2012 and 3296 of 2012 had categorically referred to that the executing court shall decide said applications Exhibits – 89 and 90 expeditiously. Factual position about notings on the proceeding sheet, about hearing having taken place on Exhibits – 89 and 90 on 2nd February, 2013 and that the matter had on quite a few dates thereafter posted for orders on the same does not appear to be in dispute.

51. Under the circumstances, there appears to be no substance in the contentions on behalf of the petitioners that they were under impression that the other exhibits would be considered and that they had not addressed to applications Exhibits – 89 and 90.

52. The contention about change of presiding officer while deciding applications Exhibits-89, 90 and 252 in the aforesaid background would hardly matter. The contentions in respect of the same, in the circumstances are vacuous. In the

circumstances, it does not appear that any error is committed by the executing court while deciding application Exhibit-252.

53. Thus, there is no substance in the writ petition. Writ petition, as such, stands dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

drp/wp10439-2014