

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

WRIT PETITION NO. 9929 OF 2013

Late Murlidhar Shankar Neve
Through L.Rs.

1. Smt. Pushpabai Murlidhar Neve,
Age: 46 years, Occupation Household,
2. Shri Uday Murlidhar Neve,
Age- years, Occupation Labour,
3. Shri Sanjay Murlidhar Neve,
Age 46 years, Occupation - Labour,
R/o Municipal House no. 2844/1
Nr. Brahman Sangh, Bhusawal,
Tq. Bhusawal, Dist. Jalgaon.

...PETITIONERS
(Judgment Debtors/
Ori. Defendants.)

versus

Late Govind Kunjbihari Agrawal,
Through L.Rs.

1. Shri Anupam Govind Agrawal
Age-30 years, Occupation - Auditor,
R/o Shri Abhishek P. Mittal, Plot No. 409
410, Golden Nest, F-4 CIDCO,
N-1, Aurangabad.
2. Smt. Mangala Govind Agrawal,
Age- 57 years, Occupation Household,
R/o Shri Gopal K. Agrawal,
M/s K.O. Agrawal, Sarf Bazar,
Bhusawal, Dist. Jalgaon.
3. Sau Ruchi Abhishek Mittal,
Age-70 years, Occupation Household,
R/o Shri Abhishek P. Mittal,
A.B. Road, Agrasen Chauk, Sendhava,
Dist. Badwani (M.P.)

...RESPONDENTS
(Decree Holders/
Ori. Plaintiffs)

.....

Mr. M.M. Bhokariker, Advocate for Petitioners
Mr. S.G. Chapalgaonkar, Advocate for respondents No. 1 to 3.

.....
CORAM : SUNIL P. DESHMUKH, J.

DATED : 18th JUNE, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally with consent.

2. Petition has been moved, purportedly aggrieved by common order dated 07-09-2013 on Exhibits - 90 and 98 in Regular Darkhast No. 30 of 1998 passed by Civil Judge, Junior Division, Bhusawal, whereunder request of present petitioners - original judgment debtors for taking steps by respondents - decree holders to serve unserved judgment debtors and not to proceed with execution proceedings till non appearing judgment debtors are served as contended, has been rejected.

3. Regular Darkhast No. 30 of 1998 had been filed for execution of decree dated 29-06-1991 in Regular Civil Suit No. 275 of 1985 for possession in proceedings pursuant to Bombay Rents Hotel, Lodging, Houses Rates Control Act, 1947. Original parties to the suit are no more. The matter is pending among legal representatives of deceased decree holder - original plaintiff and deceased judgment debtor-original defendant. It is not in dispute that original judgment debtor died during execution proceedings. It is further not in dispute that legal heirs of

deceased judgment debtor were brought on record in execution proceedings. It is also not in dispute that notices were issued by executing court to all legal heirs of the original parties.

4. After hearing learned counsel for parties, it transpires that in respect of legal heirs of original judgment debtor, one of them had accepted notices, however, while the matter in execution had proceeded further, application had been moved to serve the notice on the persons who were not residing in the suit premises and were away from the same. It appears that during course of execution proceedings, said persons came to be served by paper publication. Exhibit-90 had been moved by legal heirs of deceased judgment debtor, who appeared in the execution proceedings, requesting to take appropriate action in respect of persons who had, according to them, are not served and to adjourn the matter for the purpose of issuing possession warrant.

5. Application Exhibit-98 had been moved by the legal heirs of judgment debtor who appeared in the proceedings for appropriate orders for not taking steps by the decree holders for serving the notice on those legal heirs of the judgment debtor who had not appeared in the matter.

6. Mr. Bhokrikar, learned counsel appearing for petitioners with reference to Order V of the Code of Civil Procedure makes a

grievance that proper procedure for serving non appearing legal heirs of judgment debtor in execution proceedings had not been followed, and as such, assails common order dated 07-09-2013 on Exhibits-90 and 98 in Regular Darkhast No. 30 of 1998.

7. On the other hand, Mr. Chapalgaonkar, learned counsel appearing for respondents - legal heirs of original decree holder points out that appearing legal heirs of deceased judgment debtor had accepted notices of and for all legal heirs of deceased judgment debtor, and as such, appearing legal heirs are now estopped from making such a grievance. He further submits that by way of abundant precaution, additionally, non appearing legal heirs have once again been served by paper publication. It is being submitted that no prejudice is caused to appearing legal heirs under the circumstances. The applications are being moved in order to procrastinate the proceedings and to keep away enjoyment of fruits of litigation by the legal heirs of the decree holder. He submits that applications are frivolous and there is no substance in the same at all.

8. After hearing learned counsel, I quite see that applications Exhibits- 90 and 98 are being moved by appearing legal heirs of deceased judgment debtor predominately for the purpose of prolonging the matter in execution, alleging non following up of proper procedure.

9. Mr. Bhokrikar, learned counsel in order to buttress his submissions places reliance on the judgments in the cases of *M. Sheelamma (Died per L.Rs.) and ors. V. B. Alibert S/o Anthony and ano.* reported in *AIR 2006 Andhra Pradesh 209* and *Gauri Lal and others Vs. Smt. Sujham Devi* reported in *AIR 1986 Himachal Pradesh 3*.

10. On perusal of aforesaid rulings, it appears that the same would hardly be applicable to the facts of present case, wherein the court purported to issue warrant for possession without show cause notice to the judgment debtor though the execution proceedings were filed after quite a few years after the decree was passed. In present matter, there is no dispute about issuing notice to legal heirs of judgment debtors. Reliance on said authorities as such is not proper.

11. Perusal of impugned order shows that legal heirs of judgment debtor were issued notices which were accepted at Bhusawal on 01-03-2011 and their names have been brought on record on 09-08-2011. Appearing legal heirs of deceased judgment debtor moved application in the course of execution proceedings. Thereafter, notice under Order XXI, Rule 16 of the Code of Civil Procedure was also issued and served on judgment debtors No. 1, 2, 6, 9 and 11. One Sanjay Madhukar Neve received notices, however, purportedly refused to accept notices of other persons on the ground that "**those persons are living**."

at different places."

12. Learned Judge having regard to the factual circumstances had recorded that in order to procrastinate the proceedings such tactics were played.

13. Having regard to such factual position and that no grievance is being made by non appearing legal heirs and that the petitioners are not making any representation for that, I do not find that there is substance in the contentions being advanced on behalf of the petitioners.

14. The impugned order, as such, cannot be faulted with. This not a fit case wherein discretion can be exercised in favour of petitioners. Writ Petition, as such, stands dismissed. Rule stands discharged.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
