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

WRIT PETITION NO. 11667 OF 2015

Subhash Ganesh Deshpande

..PETITIONER

VERSUS

Prabhakar Pralhad Deshpande, died,
through L.Rs. Sharad Prabhakar
Deshpande & ors.

..RESPONDENTS

Mr Sanket S. Kulkarni, Advocate for petitioner

CORAM : N.W. SAMBRE, J.

DATE : 5th December, 2015

ORAL ORDER :

Heard Mr Kulkarni, learned Counsel appearing on behalf of the petitioner – judgment debtor, whose Second Appeal No.907 of 2008 is pending adjudication before this Court, in which an interim relief seeking stay to the execution of the decree for injunction, was already refused.

2. The decree holder filed Regular Darkhast No.12 of 1982, for execution of the injunction decree, in which the petitioner; in view of provisions of section 47 read with Order XXI, Rule 32 of the Code of Civil Procedure, moved an application Exh.71, for appointment of Court Commissioner. The same was resisted by the petitioner – judgment debtor, on the ground that his right is still under consideration in the Second appeal, referred supra, and according to him, unless willful default is noticed on the part of the petitioner, the decree ought not to have been ordered to be executed. An order is passed by the Trial Court by appointing the Court Commissioner, for executing the decree.

(2)

3. It is required to be noted in the present case, that in the Second Appeal, this Court has already refused interim relief, i.e. stay to the decree in question, as such, the decree holder was right in law, in seeking execution of the decree in question.

4. So far as the issue as regards lawful default as is sought to be raised by the petitioner is concerned, it could be gathered from the proceedings that the petitioner – judgment debtor is not intending to comply with the decree and trying to assert his rights in Second Appeal, it is open for the petitioner to agitate his rights in the Second Appeal and the parties are bound by the decision of the Second Appeal, however, in absence of any stay, in Second Appeal, which is already refused, the decree holder was right in seeking execution of the decree in question.

5. In view of above, no case for interference is made out. Writ Petition thus fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj