

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.2278 OF 2015**

1]	Rajaram Dadaso Nimbalkar	]
	[deceased through his heirs]	]
		]
1.1]	Smt.Ushadevi Rajaram Nimbalkar	]
	Aged 70 years, Occupation Well to do,	]
		]
1.2]	Dhairyasheel Rajaram Nimbalkar	]
	[deceased but no heirs brought on record	]
	before lower Court]	]
		]
1.3]	Ms. Amarja Rajaram Nimbalkar,	]
	Aged 47, Occupation Architect	]
		]
1.4]	Balaji Rajaram Nimbalkar	]
	Aged 45, Occupation Business & Agri.	]
		]
	All R/o. 2113 K/26A, E-Ward, Padma Castle	]
	Nimbalkar Colony, Behind Rajesh Motors,	]
	Kolhapur.	]..... Petitioners

versus

The Ratnakar Bank Limited	]
having its Registered Office at E-Ward,	]
Shahapuri, Kolhapur.	]..... Respondent.

Mr. N V Bandiwadekar a/w Mr. Sagar Mane for the Petitioners.
Mr. P K Dhakephalkar, Senior Advocate with Mr. Ashish Gatagat i/by M/s.
Vidhi Partners for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 11th September 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made
returnable forthwith and heard.

2 The above Petition is companion to Writ Petition No.3465 of 2015 which has been allowed by the order passed today i.e. 11/09/2015 and the Executing Court has been directed to decide the issues which are mentioned in the said order. The above Petition takes exception to two orders both dated 26/11/2014 passed by the learned 5th Joint Civil Judge, Junior Division, Kolhapur rejecting the Application (Exhibit 153) and rejecting the Application (Exhibit 135).

3 In so far as the Application (Exhibit 135) is concerned, it has its origins in the order passed on the Application (Exhibit 129) filed by the Respondent Bank herein for treating the Application (Exhibit 50) as having abated in view of the fact that the heirs of Dhairyasheel Nimbalkar were not brought on record. The said Application (Exhibit 129) filed by the Respondent Bank was allowed by the order dated 24/06/2011. It is for setting aside the said order that the said Application (Exhibit 135) came to be filed which application came to be rejected by the order dated 26/11/2014. The said rejection is on the ground that the issues are already framed in the application (Exhibit 75) filed by the other heirs of the deceased Rajaram Nimbalkar. The matter had reached this Court by way of Writ Petition No.9869 of 2011 wherein the said order dated 24/06/2011 was taken exception to. This Court had partly allowed the said Writ Petition and directed that the impugned order dated 24/06/2011 would operate only in so far as the objections of

Dhairyasheel Nimbalkar Exhibit 50 are concerned who had expired. However, in so far as the objections raised by the other heirs which included his mother are concerned, the same would be decided in terms of the directions contained in the order dated 07/06/2001 i.e. the order of a learned Single Judge of this Court Shri V. C.Daga, J. (as His Lordship then was) passed in Civil Revision Application No.778 of 1991. This Court had further observed that it does not express any opinion as regards any application that would be filed by the heirs of the said Dhairyasheel Nimbalkar for setting aside the order dated 24/06/2011 against them also. It is pursuant to the said order dated 21/12/2011 passed in Writ Petition No.9869 of 2011 that the application (Exhibit 153) came to be filed for setting aside the order dated 24/6/2011 passed against the other heirs of Dhairyasheel Nimbalkar. The said application has been rejected on the self same grounds as the Application (Exhibit 135) viz that the issues have already been framed in so far as the application (Exhibit 75) is concerned, and therefore there is now no necessity or warrant to entertain the application (Exhibit 50).

4 In my view, the Executing Court has erred in following the said course of action. It is required to be noted that this Court in the earlier round by the order dated 21/12/2011 has directed that the objections to be considered on the basis of the directions contained in the order dated 7/6/2001. This Court had also observed that it does not express any opinion

as regards any application that would be filed by the other heirs of Dhairyasheel Nimbalkar for setting aside the order dated 24/06/2011, merely because the issues have been framed, in so far as the application (Exhibit 75) is concerned, the same would not result in the Trial Court not entertaining the application (Exhibit 50). In my view, therefore, the impugned order dated 26/11/2014 in so far as it rejects the application (Exhibit 153) is concerned, it is required to be quashed and set aside and is accordingly quashed and set aside. The application (Exhibit 153) would accordingly stand allowed. The objections of the heirs of Dhairyasheel Nimbalkar would accordingly also have to be considered. However, in view of the fact that this Court has already allowed the companion matter i.e. Writ Petition No.3465 of 2015, and framed two issues which find place in the order passed today i.e. 11/09/2015 in the said Writ Petition, it is not necessary to frame separate issues in so far as application (Exhibit 50) is concerned. The same would also be adjudicated on the basis of the said two issues which have already been framed. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with the parties to bear their respective costs of the Petition. In view of the fact that the decree has been passed as long back as in the year 1974, the Trial Court is directed to proceed with the execution with reasonable despatch.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed Judgment.