

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION(ST)NO.3100 OF 2015**

Shivaji Shankar Dorle

...Petitioner

vs.

Niyogit Vikrant Sahakari Gruh

Nirman Sanstha, Sangli & Ors.

...Respondents

Mr. Anilkumar Patil for the Petitioner.

Mr. Ramdas A. Shelke for the Respondent Nos.1, 2A, 2C, 2D, 3A to 3C, 5A, 5B, 6 to 9, 10A and 11 to 19.

CORAM : R. M. SAVANT, J.

DATE : 26th FEBRUARY, 2015.

PC. :-

The above Writ Petition epitomizes one more instance of a Judgment Debtor seeking to stall the execution of a decree which has been passed long back in the instant case being in the year 1990. The impugned order dated 26th November, 2014 has been passed on the application Exhibit 78 filed by the Judgment Debtor No1-A seeking to lead evidence in the execution proceedings. It is required to be noted at this stage, that the decree of specific performance which was passed by the Trial Court was confirmed by a learned Single Judge of this Court albeit with some modification. The matter was thereafter carried to the Apex Court by the Defendants. The Apex Court directed the Plaintiff to deposit an additional amount of Rs.10 lakhs in the executing Court over and above the consideration that was payable by the Plaintiff in terms

of the agreement for sale in respect of the property. It appears that whilst the proceedings were pending before the Apex Court some part of the suit property was constructed upon and there seems to be a structure on the land in question. Be that as it may, the instant application Exhibit 78 as indicated hereinabove has been filed by the Judgment Debtor No.1-A to lead evidence in respect of a sale deed executed by his father, the original Judgment Debtor in favour of one Jaywant Nivruti Patil. The undertone of the said application appears to be that the decree cannot be executed in view of the sale of about 17 R of land out of the 40 R of land execution of which is sought by the said execution proceedings. Significantly, it is not the said Jaywant Nivruti Patil who has filed the application but it is the Judgment Debtor No.1-A who is the heir of the original Judgment Debtor No.1 who has executed sale deed who has filed the application. The Trial Court adverted to the fact that the Judgment Debtor No.1-A would be bound by the adjudication which has taken place against his father that is Judgment Debtor No.1. The Trial Court has adverted to the fact that Judgment Debtor No.1-A seems to be filing applications after applications with an intent to see to it that the decree in question is not executed it. The Trial Court observed that a similar application Exhibit 17 filed by the Judgment Debtor No.1-A has already been rejected. Significantly, in the application Exhibit 17, the Judgment Debtor No.1-A had prayed that

the decree should be executed in respect of the open portion implicit in the said prayers sought is the acceptance of the fact that the Judgment Debtor No.1-A seem to have interfered with the property pending the execution proceedings, and may be even, whilst the proceedings were pending before this Court or the Apex Court. The Executing Court having regard to all the aforesaid facts as also considering the fact that decree has been passed as long back as in the year 1990 did not deem it appropriate to allow the application Exhibit 78 filed by the Judgment Debtor No.1-A for being permitted to lead evidence. The Trial Court observed that though this was a proceeding under section 47, however, having regard to the facts as aforestated, permission could not be granted to the Judgment Debtor No.1-A to lead evidence. In my view, the reasons mentioned by the Executing Court are unexceptional, having regard to the antecedent facts as above, the writ jurisdiction of this Court obviously cannot be exercised in such a case. The Writ Petition is, accordingly, dismissed.

(R. M. SAVANT, J.)