

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5577 OF 2014**

**Joshi Appliances and others**

**.. Petitioners**

**Versus**

**Racold Thermo Ltd.**

**.. Respondent**

**Mr. Amey Deshpande, Advocate for the Petitioners.**

**Mr. Dhakane Vijaykumar & Priya C. Vaithy, Advocate for Respondent.**

**CORAM : R.M. SAVANT, J.**

**DATE : 20<sup>th</sup> JANUARY, 2015**

**PC.**

1. The writ jurisdiction of this Court is invoked against the order dated 11.04.2014 passed by the executing Court i.e. the Learned Civil Judge Senior Division, Nashik, by which order the application Exh.21 filed by the Petitioners/original Defendants and Judgment Debtors in the execution proceedings came to be dismissed, in as much as the objection raised by the Petitioners to the said execution proceedings came to be overruled. The Respondent herein is the original Plaintiff who had filed the suit in question being Special Civil Suit No.1101 of 2006 for a money claim. The said suit came to be decreed by the Trial Court by judgment and order dated 28.09.2012 and in terms of the decree, the Petitioners i.e. Defendants were directed to pay an amount of Rs.49,09,160.73 ps. to the

Plaintiffs. The Defendants were further directed to pay the pending future interest at the rate of 18% per annum on the principal amount. It is an undisputed position that the said decree was not challenged by the Defendants in the higher Court.

2. The Plaintiff put the said decree in execution by filing Special Darkhast No.54 of 2013. The Defendants filed application Exh.21 objecting to the execution of the decree on the ground that since the decree was passed by the Trial Court, when it did not have the territorial jurisdiction to entertain the suit, the decree was a nullity. The said objection was considered by the executing Court and the executing Court has by the impugned order dated 28.09.2012 has overruled the said objection and directed the execution to proceed further. The gist of the reasoning of the executing Court as can be seen from the impugned order is that though the territorial jurisdiction was questioned by the Defendants in the written statement filed by them, no issue was framed by the Trial Court nor the Defendants prayed for an issue to be framed in that regard. The executing Court has also referred to the judgments of the Supreme Court, wherein the Supreme Court has distinguished between void and voidable decrees. The Lower Appellate Court was of the view that in terms of Section 20 of the Civil Procedure Code, the suit could be filed in the Court at Pune, and hence the objection of the Defendants to the territorial

jurisdiction did not have merit. Since the issue of territorial jurisdiction was the only aspect on the basis of which the application Exh.21 was founded the executing Court held that there was no warrant to frame issues etc. whilst trying the said application Exh.21. In my view, having regard to the reasons mentioned by the executing Court in rejecting or overruling the objection of the territorial jurisdiction raised by the Petitioner / original Defendants / Judgment Debtors, in my view no case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]