

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

WRIT PETITION NO. 8131 OF 2014

Shri Babanrao Narayanrao Sable ..Petitioner.
Vs
M/s Laxmi Commercials, Satara .. Respondent

Mr. Shailesh D. Chavan, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.
DATE : 10/06/2015

PC:

1. Heard Mr. Shailesh Chavan, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 25.4.2014 passed by the learned Civil Judge, Senior Division, Satara, below Exhibits 19, 21 and 22 in Regular Darkhast No.155 of 2012. By that order, the learned trial Judge rejected the application Exhibit-19 for stay of the execution proceedings. The learned trial Judge rejected the application Exhibit 21 asking the decree-holder to produce certificate of registration of partnership firm, Deed of Partnership. The learned trial Judge also rejected the application Exh.22 for dismissing Darkhast on the ground that it is not maintainable.
3. In support of this petition, Mr Chavan strenuously

contended that Spl.Civil Suit No.57 of 2004 was instituted by M/s Laxmi Commercials, through its partner Hemkiran Shrikisan Kasat. After the suit was decided on 20.10.2005, Mr. Hemkiran died bachelor. He died leaving behind no heir. After his death, Darkhast is instituted by Anand Kantilal Kasat who has no locus. He was not party in the suit. He further submitted that Darkhast is instituted on 9.9.2011, that is to say, almost after six years from passing of the decree on 20.10.2005. He further submitted that M/s Laxmi Commercials is a partnership firm. However, it is not duly registered. The learned trial Judge ought to have allowed the application Exh.21 and directed the decree holder to produce documents asked by the petitioner. For all these reasons he submitted that the petition requires consideration.

4. I have considered the submission advanced by Mr Chavan. I have also perused the material on record. Most of the objections raised by the petitioner were already decided while disposing of the suit. In paragraph 8, the learned trial Judge held that the suit is not hit by the provisions of Section 69 of the Indian Partnership Act, 1932 (for short, 'said Act') as the partnership arising out of the status of the parties as in a Hindu Joint Family, is taken out of the provisions of the said Act and only such partnerships which are based on agreement between the parties are hit by the provisions of section 69 of the said Act. It is not in dispute that

the petitioner has not challenged the said judgment and thus has attained finality.

5. The submission of Mr. Chavan that Anand Kantilal Kasat who had instituted Darkhast, has no locus, is also devoid of substance. Perusal of the trial Court's Judgment dated 20.10.2005 clearly shows that M/s Laxmi Commercials is run by members of Hindu Undivided Family, namely, Shakuntala Manik Kasat, Sau. Mangala Kantilal kasat, among others. Admittedly, Anand Kantilal Kasat is son of Mangala Kantilal Kasat. In view thereof also I do not find any merit in the submission of Mr Chavan that Anand Kantilal Kasat has no locus to maintain Darkhast proceedings.

6. As far as ground of limitation is concerned, the suit was decreed in the year 2005 and as per Article 136 of the Limitation Act, period of 12 years is provided for filing Darkhast proceedings. Admittedly, Darkhast is filed in 2011 and consequently cannot be said to be barred by limitation. Mr. Chavan relied upon the decision of Basha Khan Vs. K Selvaraj, AIR 1999 Madras 374 to contend that execution cannot be imitated by legal representatives of decree holder without producing succession certification as contemplated under section 214(1)(b) of the Indian Succession Act, 1925. As noted earlier, decree holder is M/s Laxmi Commercials. M/s Laxmi Commercials

is run by Hindu Undivided Family and, therefore, the decision in the case of Basha Khan (supra) does not advance the case of the petitioner. In view thereof, no case is made out for interfering with the impugned order. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)