

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

**WRIT PETITION NO.8047 OF 2013**

**Mahipal Himmatlal Jain** : Petitioner.  
**Versus**  
**Gyasuddin Gafur Khan and anr.** : Respondents.

**Mr. N V Gangal for the Petitioner.**  
**Mr. N V Bhutekar for the Respondent No.1.**  
**Mr. P R Suryawanshi i/by Mr. G M Savagave for the Respondent No.2.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 12<sup>th</sup> October 2015**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 02/08/2013 passed by the learned Civil Judge, Junior Division, Khalapur by which order the Application (Exhibit 185) filed by the Petitioner who is an obstructionist for carrying out the amendment in the Application filed by him for obstructing the decree came to be rejected.

2           The decree in question has been passed as long as back on 11/12/1993. The said decree has put in execution by filing Regular Darkhast No.11 of 1996. In the said Execution Proceeding the Petitioner has filed the Application for obstructing the execution of the decree. In the affidavit in support of the said obstructionist application, it has been mentioned that adjacent to the suit property i.e. property No.65-G, the Petitioner is carrying out business in the name and style of Ankit Automobiles in the galla which is

adjacent to the said property No.65-G in Property No.65-C. The Petitioner it seems thereafter applied for issuance of witness summons pursuant to which representative of the Khopoli Municipal Council remained present in the Court and he produced the assessment extract in respect of the property No.65-B which stands in the name of one Ahmad Haji. The Petitioner thereafter proceeded with the trial of his application for obstruction. The Petitioner also undertook cross examination on the basis that the suit property is Property No.65-G. It is thereafter that the instant Application ((Exhibit 185) came to be filed for amendment of the obstructionist application so as to correct the property on which the Petitioner is as Property No.65-B.

3           The Trial Court has rejected the said application by the impugned order. The principal ground on which the Trial Court has rejected the said application is that the trial of the said obstructionist application has proceeded and therefore the parties have opened up their defences, and if any amendment is now allowed, the same would prejudice the decree holders who have been waiting for the fruits of the decree since the year 1993.

4           In my view, having regard to the reasons mentioned by the Trial Court, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed. All interim orders stand vacated. However, it would be open for the Petitioner to adduce such evidence

in support of his case as is permissible in law in the said application for obstruction.

**[R.M.SAVANT, J]**