

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9855 OF 2014**

Prashant Vithal Gardi

..Petitioner

Vs.

Parshurm Bhau Diwate

..Respondent

Mr. P. D. Jadhav a/w Mr. S. P Kadam for the Petitioner

Mr. V. M. Kanchan for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 16th FEBRUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 6-11-2012, passed by the Learned Joint Civil Judge Junior Division, Kalyan, by which order, the application Exhibit 17 filed under Order IX Rule 13 of the Civil Procedure Code, 1908, came to be dismissed. The dismissal is on the ground that when the said application was listed no appearance was put up on behalf of the Defendant i.e. the Petitioner herein and secondly on the ground that no case for exercise of jurisdiction under Order IX Rule 13 has been made out.

2 A perusal of the application Exhibit 17 discloses that it is bereft of any reasons as to why the Defendant i.e. the Judgment Debtor did not remain present before the Court when the Suit was decreed. The application is running into 2 pages which only refers to the order dated 22-8-2011 passed by the

Learned Single Judge of this Court (R. M. Borde, J.) in the earlier round i.e. in Writ Petition No.5085 of 2011. As indicated above there is nothing mentioned in the application as to the reasons why the judgment Debtor i.e. the Petitioner herein did not participate in the proceedings whilst they were in the Trial Court. Apart from the said fact, it is also required to be noted that the impugned order is dated 6-11-2012 whilst the above Petition has been filed in September 2014 and hence in so far as the filing of the above Petition is concerned, there is laxity in filing the same.

3 The learned Counsel appearing on behalf of the Decree Holder i.e. the Respondent herein tenders an order dated 17-1-2015 passed by the Learned Civil Judge Junior Division, Kalyan, i.e. the Executing Court by the said order, the Commissioner to execute the document in question pursuant to the decree for specific performance being granted, has been appointed. Hence the execution proceedings have also progressed to the stage where the Commissioner has been appointed and now it is only the execution of the document which remains.

4 Having regard to the aforesaid facts, the interdiction of this Court in its Writ Jurisdiction is not warranted. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]