

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11428 OF 2015

The Maharashtra Road Transport Corporation
Through Its Divisional Controller
Jalgaon Division, Jalgaon.

..PETITIONER

VERSUS

Vijay Punjaji Avhad

..RESPONDENT

....
Mr. Manoj Shinde, Advocate holding for Mr. M.K. Goyanka,
Advocate for petitioner.

Mr. P.G. Deshmukh, Advocate holding for Mr. Y.P. Deshmukh,
Advocate for respondent.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 17th FEBRUARY, 2016**

ORAL ORDER :

1. While issuing notice to the respondent, this Court had passed an order on 04.12.2015 which reads as under:

“1. Issue notice before admission to the respondent, returnable on 06/01/2016. Mr.Deshmukh, learned Advocate waives service for the sole respondent.

2. The petitioner submits that objections in the form of say and written statement was filed below Exh.13 in Execution Application No.37/2004 on

09/03/2005. There has been no decision on the said application as is expected u/s 47 of the CPC, 1908. The impugned order dated 08/09/2015 has been passed for issuing warrant of attachment of the movable property of the MSRTC under Order 21 Rule 43 of the CPC.

3. The respondent has entered an affidavit in reply dated 03/12/2015, today.

4. Mr.Deshmukh seeks time to get instructions from the respondent as to whether the objections of the petitioner below Exh.13 have been dealt with by the Executing Court in these past 10 years. As such, the respondent is at liberty to file an additional affidavit with regard to this aspect.

5. Till the next date of hearing in this matter, the impugned order dated 08/09/2015 passed below Exh.43 in Spl.Darkhast No.31/2006 shall not be implemented.”

2. Mr. Deshmukh, learned Counsel for the respondent on instructions submits that application Exhibit 13 which are the objections of the petitioner before the executing Court in Special Darkhast No. 31/2006 is still pending. As there is no decision on the said application under Section 47 of the Civil Procedure Code,

the Executing Court may very well deal with the same on its own merits and expeditiously.

3. Mr. Shinde, learned Counsel for the petitioner submits that as application Exhibit 13 is to be decided in accordance with Section 47 of the Civil Procedure Code, the warrant of attachment of the movable property of the petitioner-MSRTC under Order 21 Rule 43, deserves to be kept pending till such decision.

4. I find that both the litigating sides are agreeable to the above, subject to the condition that application Exhibit 13 be decided within a time frame.

5. In the light of the above, this petition is partly allowed. Impugned order dated 08.09.2015 is kept in abeyance till application Exhibit 13 filed by the petitioner is decided in Special Darkhast No. 31/2016. Needless to state, the Executing Court is at liberty to modify the impugned order dated 08.09.2015 after it arrives at its decision on Exhibit 13 on its own merits.

6. As the execution proceedings are pending from 2002, it is expected that the Executing Court shall decide Exhibit 13 (and the fate of order dated 08.09.2015) alongwith the Special Darkhast No. 31/2006 together, as expeditiously as possible and preferably on or before 30.05.2016.

7. Needless to state that all the contentions of the litigating sides are kept open and they are at liberty to rely on documents if so advised.

(RAVINDRA V. GHUGE, J.)