

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

WRIT PETITION NO. 11887 OF 2016

Shrikishan Vachista Handibag and Others ..PETITIONERS

VERSUS

Pandurang Ramchandra @ Rangrao Revalkar
and Others ..RESPONDENTS

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Mr. V.D. Salunke, Advocate for petitioners.

Mr. M.D. Narwadkar, Advocate for Respondent Nos. 2-2, 2-3 and 2-5.

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CORAM : T.V. NALAWADE, J.

DATED : 01st DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order dated 02nd April, 2013 made on Exhibits 8, 69 and 71 in Regular Darkhast No. 07 of 2001 pending before the Civil Judge, Junior Division, Kaij. Both sides are heard.

2. The aforesaid execution proceeding is filed by present respondents for execution of decree given in their favour of declaration and possession in respect of immovable property. The decree was given in First Appeal filed by them which came to be decided on 11th September, 2000. After getting the decree, they filed Regular Darkhast No. 07 of 2001. They could not get further orders in regular darkhat as Second Appeal was filed by the judgment debtor – present petitioner and this Court had stayed the

execution of decree in Second Appeal. The Second Appeal came to be decided on 26th August, 2011. In the Second Appeal, legal heirs of the deceased decree holder – Prabhakar were brought on record by the present petitioner as party respondent and then second appeal was decided.

3. It appears that after the death of Prabhakar, within 90 days application was moved by his issues to come on record as legal heirs. This application remained pending. Then, in the year 2012, another application was given to bring on record the legal heirs of Prabhakar. Other decree holder – real brother is already on record. Then application was moved for making amendment in the execution proceeding to show all legal heirs of decree holder – Prabhakar on record. These applications are allowed by the Executing Court.

4. Learned Counsel for petitioner submitted that when Prabhakar died on 30th September, 2001, his legal heirs were not brought on record till the impugned order dated 02nd April, 2013 in execution proceeding and so execution proceeding itself was abated. For considering the contentions made against the legal heirs of Prabhakar, it can be said that other decree holder was on record and he could have got execution of the decree in favour of all decree holders as his interest were not against the other decree holder.

5. Learned Counsel for respondent submitted that when there was stay to the execution of decree granted in the Second Appeal, the decree holder could have even waited till the decision of second appeal and after getting the decision in Second Appeal, application could have been moved by the decree holder. He submitted that when the legal heirs of Prabhakar were already brought on record in Second Appeal, the Court needs to presume that they were on record already and they could have filed execution proceeding directly after the decision of Second Appeal. This submission needs to be accepted. Further the learned Counsel for original decree holder submits that in view of provisions of Order 22 Rule 10A of the Code of Civil Procedure, the provision of Order 22 Rules 3 and 4 cannot be used against the legal heirs of decree holder. In support of these contentions, he placed reliance on the observations made by the Apex Court in the case reported as ***AIR 1998 SC 1168 (V. Uthirapathi Vs. Ashrab Ali)***. The Apex Court has made interpretation of Rules 3 and 4 of Order 22 and has laid down that the execution proceeding does not abate only due to death of the decree holder and law of limitation does not apply for bringing legal heirs of decree holder on record.

6. Against the aforesaid submissions made by learned Counsel for decree holder, learned Counsel for petitioner placed reliance on the

observations made by the Apex Court and this Court in three cases reported as *(2009) 6 SCC 194 (Sneh Gupta Vs. Devi Sarup and Others)*, *2001 AIR SCW 2351 (Ragho Singh Vs. Mohan Singh and Others)* and *1997 (2) Mh.L.J. 168 (Mathuradas Mohta College of Science, Nagpur Vs. R.T. Borkar and Others)*. The facts of these reported cases were totally different as the point of limitation which is prescribed for filing different proceedings was involved in all the three matters. The observations made in these cases cannot be used in the present matter. It appears that the judgment debtor is playing every tactics to see that the execution of decree is delayed. Such observations are already made by this Court while deciding the Writ Petition No. 7186 of 2014 on 23rd April, 2015.

7. This Court holds that it is not possible to interfere in the order made by the Executing Court. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

SSD