

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

WRIT PETITION NO. 5463 OF 2017

Satish @ Chandu Gangaram Jaikar ..PETITIONER

VERSUS

Sudam Wamanrao Rajbhoj and Others ..RESPONDENTS

....
Mr. G.D. Jain, Advocate for petitioner.

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**CORAM : M.S. SANKLECHA, J.
DATED : 26th APRIL, 2017**

ORDER :

1. This petition challenges the order dated 27th January, 2017 passed by the Joint Civil Judge, Senior Division, Aurangabad. The impugned order has rejected the petitioner's (judgment debtor no.1 in the execution proceedings) application under Section 47 of the Code of Civil Procedure for setting aside the decree passed in favour of the decree holder and also to stay the possession warrant.

2. The impugned order dated 27th January, 2017 on consideration of various decisions of this Court records that the Executing Court cannot go behind the decree. Further, it also records that it is not the case of

petitioner that the decree is a nullity. The various contentions raised in the application were admittedly those which could have been raised or which were raised during the trial leading to the passing of the order/decreed which is being sought to be executed. The impugned order notes the fact that judgment debtor i.e. the petitioner by his application is seeking to challenge the merits of the judgment in execution proceedings. Consequently he holds that challenge to a decree cannot be made under Section 47 of the Code of Civil Procedure.

3. The grievance of Mr. Jain, learned Counsel for the petitioner is that in terms of Section 47 of the Code of Civil Procedure it is incumbent upon the Court to deal with all issues which may arise between the parties in the suit in which the decree was passed. Consequently it is submitted that issues raised by the petitioner ought to have been considered and adjudicated upon by the Executing Court even if the same could have been raised during the trial leading to the decree. It is further submitted that in view of provision of Section 47 of the Code of Civil Procedure, it is not open to the Executing Court to suggest that where fraud is alleged by the decree holder, the redressal of the same is by filing separate suit to set aside the decree obtained by fraud.

4. If the submission of Mr. Jain, learned Counsel for the petitioner is to be accepted then there would be a second trial/adjudication of the dispute at the time of execution of the decree. This certainly is not the objective of Section 47 of the Code of Civil Procedure. The impugned order does not warrant any interference under Article 227 of the Constitution of India.

5. Therefore petition is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

SSD