

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5630 OF 2016

Rekhasingh Charansingh Sandhu,
Age 60 Years, Occ. Business,
R/o Sangam Road Carrier,
Bhagatsing Road, Nanded.

..Petitioner

Versus

1. Vimalbai Pundalik Chavan,
Age major, Occ. Household,
R/o Hadoli Tanda, Tq. Loha,
District Nanded.

2. Ankush Pundalik Chavan,
Age major, Occ. Nil,
U/g of respondent No.1 i.e. mother.

3. Ulhas Pundalik Chavan,
Age 24 , Occ. Labour,
R/o Hadoli Tanda, Tq. Loha,
District Nanded.

4. Babarao Pundalik Chavan,
Age major, Occ. Labour
R/o as above.

5. Devidas Pundalik Chavan,
Age major, Occ. Labour
R/o as above.

6. Ashabai Mehavan Chavan
Age 21 years, Occ. labour
R/o Godi Tanda, Taluka Loha,
District Nanded.

7. Panchabai Maroti Chavan
Age 22 years, Occ. Labour
R/o as Above.

8. Kushabai Laxman Rathod,
Age 25 years, Occ. Labour,
R/o as above.

..Respondents

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Advocate for Petitioners : Shri Bora Satyajit S.
Advocate for Respondents 1 & 2 : Shri Nandedkar D.Y.
Advocate for Respondents 3 & 8 : Shri Bagal S.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 08, 2017

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ORAL JUDGMENT :-

1. Heard the learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. The petitioner is aggrieved by the order dated 17.12.2015, by which, application Exhibit 20 filed by the petitioner praying for recognizing and validating the payment of money to the decree holder under Order XXI Rule 2 of the Civil Procedure Code ("CPC") has been rejected.
5. I have considered the strenuous submissions of the

learned Advocates.

6. There is no dispute that on account of the demise of Pundlik, his wife Vimalbai along with the mother and son of the deceased, preferred a claim bearing No. MACT 2202 of 2002 for seeking compensation. By judgment dated 5.8.2003, the claim was allowed and the petitioner was directed to pay an amount of Rs.2,65,000/- with interest @ 9 % per annum. On 2.2.2005, respondent Nos.1 and 2 herein filed a Regular Darkhast No.39 of 2005 seeking execution of the decree. The total amount claimed, with interest, was Rs.3,57,894/-.

7. It is the case of the petitioner that the petitioner preferred to settle the claim out of Court with the claimants under Rule 1(1)(b) of Order XXI of the CPC and paid the entire amount of Rs.3,57,894/- to Vimalbai on 3.10.2005. The said payment has been evidenced by a written document on a non-judicial stamp paper of Rs.50/-. Thereafter, the petitioner moved the executing Court under Order XXI Rule 2 of the CPC for recording the payment to the decree holder out of Court and seeking validation that the decree has been satisfied.

8. The applicants in the execution proceedings declined to acknowledge the payment of the said amounts and took a stand that no such payment was received by Vimalbai. The executing Court permitted the parties to lead evidence and by the impugned order has concluded that the writing on the Rs.50/- non-judicial stamp paper does not inspire confidence and cannot be accepted as being a valid proof of the payment of the entire decreed amount.

9. Shri Bora strenuously submits that the evidence of Vimalbai before the executing Court clearly indicates that she herself had purchased the bond paper and has submitted it to the petitioner. Though the document was not notarized and was not subjected to verification, it would evidence the payment of the amount under Order XXI Rule 1(1)(b) of the CPC. He submits that when the document in any form bearing the thumb impression of the decree holder is placed on record and has the photographs of the decree holder affixed thereon, it needs to be accepted as a piece of evidence. He, therefore, prays that the impugned order be quashed and set aside.

10. Learned counsel for the respondent defended the

impugned order by contending that the writing on the non-judicial stamp paper was an act of the petitioner with the intention of taking undue advantage of the illiteracy of Vimalbai, who is the wife of the deceased. It is stated that though Vimalbai sought change of Advocate, with an ulterior motive as is contended by Shri Bora, the said would have little bearing as, whether an Advocate is changed or not, the factum of payment needs to be established under Order XXI Rule 2 of the CPC. Vimalbai has not received the amount and her illiteracy was exploited by the petitioner by settling the matter out of Court. This further indicates that the petitioner was not precluded from approaching the executing Court and making the payment of the decreed amount since the petitioner claims that the entire amount has been paid.

11. I have scrutinized the impugned order, which is quite extensive and is based on the evidence recorded by the executing Court. It is curious that the petitioner did not choose to have the deed of settlement notarized before a notary so as to render validity to the said document. The petitioner could also have ensured that proper affidavits were executed by following the due procedure if the amount was actually paid to

Vimalbai. It also cannot be ignored that an amount as large as Rs.3,57,894/- is said to have been paid in cash by the petitioner to Vimalbai. If the entire decreed amount was to be paid, it is beyond comprehension as to what prevented the petitioner from making the said payment in the presence of the executing Court so as to enable the executing Court to pass an order under Order XXI Rule 2 of the CPC. This would have led to the complete satisfaction of the decree.

12. In the above backdrop, the documents bearing the thumb impression of Vimalbai would not inspire confidence. The principles of probabilities indicate that the entire amount, if was being paid to Vimalbai, could have been paid in the Court itself. Vimalbai has stated on oath that she was not paid the said amount. She has denied her thumb impression on the bond paper.

13. When the petitioner was making the entire payment of the decreed amount, it would have been more convenient for the petitioner to make the said payment in the open Court where the executing Court would have passed orders under Rule XXI Rule 2 of the CPC. There are no reasons canvassed by the

petitioner as to what prevented such payment of entire decretal amount before the Court and what were the compelling circumstances for making the said payment in cash and out of the Court.

14. In the light of the above and keeping in view that that the executing Court has relied upon the law laid down in the reported judgments, I do not find that the impugned order could be termed as being perverse or erroneous. Merely because a second view is possible, would not justify causing an interference in the writ or supervisory jurisdiction of this Court, considering the law laid down by the Honourable Supreme Court in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682].

15. This petition being devoid of merits is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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