

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

WRIT PETITION NO. 6496 OF 2016

Maharashtra Agro Industries
Development Corporation Limited
Regional Office, Godavari Complex,
VIP Road, Nanded,
Through its Regional Manager,
Shri.Vishwanath Ramchandra Dudhalkar,
Age : 56 years Occu : Service,
R/o : Nanded,Taluka and District :
Nanded.

...Petitioner

versus

Bapurao Ragarao Deshmukh
Age : Major, Occu : Business,
R/o : C/o: M/s.Jaikisan Krushi
Seva Kendra, Hatta, Taluka Basmat,
District Hingoli.

...Respondent

Advocate for Petitioner : Mr.A.S. Savale
Advocate for respondent No.1 : Mr. P.N.Sonpethakar

**CORAM : NITIN W. SAMBRE, J.
DATED : 13th NOVEMBER, 2017.**

ORAL ORDER :-

1. The writ petitioner/decreed holder pursuant to the compromise that had taken place on December 13, 1989 and recorded by Civil Judge, Senior Division, Nanded in Special Civil Suit No. 82 of 1987 had gone for execution of compromise decree vide Special Darkhast No. 2 of 2001.

The same had been dismissed in default on March 28, 2013.

2. Petitioner had, therefore filed proceeding i.e. Miscellaneous Application No.169 of 2013 under Order IX, Rule 9 of Civil Procedure Code for restoration of aforesaid Special Darkhast No.2 of 2001. However, the said Miscellaneous Application was erroneously withdrawn on 12.03.2014 and on 15.04.2014, petitioner had filed fresh proceedings under Regular Darkhast No.5 of 2014 for execution of compromise decree.

3. Vide order dated 9th January, 2015, the said execution proceeding bearing Regular Darkhast No. 5 of 2014 came to be dismissed holding the same to be barred.

4. The petitioner, thereafter, moved Civil Miscellaneous Application No.195 of 2015 for restoration of the said Execution Petition i.e. Special Darkhast No. 2 of 2001, which too was dismissed on 8th February, 2016 on the ground that the benefit of Limitation Act cannot be extended to the present petitioner pursuant to section 14 of the Limitation Act. This dismissal is under challenge in present writ petition.

5. The learned counsel for the petitioner in the wake of above, submits that the learned executing court committed error of law apparent on the face of the record in refusing to extent the benefit of Limitation Act in favour of the petitioner which is a Public Body. According to him, it is not in dispute that Special Darkhast proceedings had been dismissed in default on March 28, 2013, and as such, the restoration was permissible. However, it is upon wrong legal advise to withdraw Miscellaneous Application No. 169 of 2013, the petitioner is made to suffer. According to him, as a consequence of the order impugned, there is loss to the public exchequer – a public body.

6. Per contra, learned counsel for respondent judgment debtor submits that petitioner had knowledge that restoration of the execution proceedings was permissible, he ought to have filed application for the same, but, instead, he had filed second execution proceedings which is not maintainable. According to him, based on this objection raised by respondent, the trial court dismissed the second execution proceedings holding it to be barred by limitation. He would urge that present petitioner has taken a chance by way of second execution proceedings despite, it was

brought to the notice of the present petitioner that remedy under section 14 of the Limitation Act was not available.

7. Considered the rival submissions. Perused the order impugned. It is required to be noted that though the petitioner had taken out the proceedings (Miscellaneous Application No.169 of 2013) for restoration of execution proceedings viz. Regular Darkhast No.2 of 2001, however, said application for the reasons best known to him was not pressed and withdrawn and fresh execution proceedings were initiated under Regular Darkhast No.5 of 2014. Though, to fresh proceedings an objection was raised, the petitioner continued to pursue the same on its merits when, in fact, the petitioner should have withdrawn the same at that moment and pursued restoration of earlier proceedings. However, petitioner has taken chance to pursue second execution proceedings. In fact, he was knowing that the first proceedings could very well have been restored.

8. The executing court noticed that the execution proceedings were knowingly initiated after substantial delay of 12 years and therefore, the limitation as provided under Article 136 of Limitation Act was formed to be the basis for

negating the claim of the petitioner. Since the order of rejection passed against the petitioner is well reasoned, in my opinion, does not call for interference.

9. Petition lacks merit and stands dismissed.

(NITIN W. SAMBRE, J.)

mta/-