

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9232 OF 2017

SANTOSH ABASAHEB BHAPKAR
VERSUS
HINDUSTAN PETROLEUM CORPORATION LTD.

Advocate for Petitioner : Shri G.J. Pahilwan.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 22nd August, 2017

PER COURT :

1. The petitioner/decreed holder is aggrieved by the order dated 06/03/2017, which is impugned in this Writ Petition.
2. The petitioner submits that after he succeeded before the Trial Court, he preferred Regular Darkhast No. 50/2016, for seeking execution of the award dated 23/10/2015. In the execution proceedings, the respondent/Hindustan Petroleum Corporation Limited appeared in the matter only after the warrant was issued and an application was filed on 18/02/2017, praying for recalling of the "proceed ex-parte" order passed by the executing Court. By the impugned order

the executing Court has set aside the “proceed ex-parte” order without assigning proper reasons.

3. I have considered the submissions of the learned advocate for the petitioner and have gone through the petitioner paper book with his assistance.

4. The record reveals that the execution of the award was stayed by the District Court, Ahmednagar. The “proceed ex-parte” order was passed on 05/10/2016. The judgment debtor had appeared before the executing Court and had moved an application on 18/02/2017, praying for the vacating of the “proceed ex-parte” order and permit the respondent to participate in the execution proceedings.

5. It is apparent that the respondent has not caused an inordinate delay. Since, the award was stayed, the judgment debtor has moved an application for vacating “proceed ex-parte” order. It requires no debate that if the “proceed ex-parte” order is not set aside, the judgment debtor/respondent herein would

be precluded from participating in the execution proceedings and would be practically rendered defenseless. The executing Court, has therefore, imposed costs of Rs. 200/- and has recalled the “proceed ex-parte” order.

6. Keeping in view, the interest of justice and in order to prevent the judgment debtor from becoming defenseless, I do not find that the impugned order could be termed as perverse or erroneous.

7. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)