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

**WRIT PETITION NO.6853 OF 2012**

Jaydevsing s/o Jaysing Rawal alias  
Bapusaheb Rawal, Age: 62, Occ:Agri.,  
R/o. Rawalgadhi, Dondaicha,  
Tq. Shindkheda, Dist. Dhule. ..PETITIONER

VERSUS

1. Liquidator,  
Jay Hemchandreshwar Upsa  
Jalsinchan Society Ltd., Wani,  
Post Dawul, Tq. Shindkheda,  
Dist. Dhule.
2. M/s. Mahadu Nago & Brothers  
Kusumbe, Tq. & Dist. Dhule,  
Through its partner  
Mahadu Nago Choudhari  
Age: 83, Occ: Contractor,  
R/o. Kusumbe, Tq. & Dist. Dhule.  
Died through L.Rs.
- 2A. Anil s/o Mahadu Choudhari,  
Age: 40 years, Occ: Contractor,  
R/o. Kusumbe,  
Tq. & Dist.Dhule. ..RESPONDENTS

Mr P.R. Patil, Advocate for petitioner;  
Mrs Vaishali Patil-Jadhav, A.G.P. for respondent  
No. 1;  
Mr V.D. Hon, Senior Advocate for respondent No.2

**CORAM : NITIN W. SAMBRE, J.**

**DATE : 1st NOVEMBER, 2017**

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**ORAL ORDER :**

In exercise of Order 21 Rule 41 of the Code of Civil Procedure, the Executing Court, on 10<sup>th</sup> November, 2003 pursuant to money decree against the Co-operative Society directed the present petitioner as then Chairman of the Judgment Debtor – Society to file affidavit disclosing the assets of the said society.

2. Since the petitioner failed to comply with the said order, learned Executing Court passed order directing detention of the present petitioner in civil prison, which order is questioned in the present proceedings.

3. Admittedly, from the record, it can be born out that the petitioner had not complied with the order dated 10<sup>th</sup> November, 2003 by submitting affidavit as directed by the Executing Court.

4. The excuse for not complying with the said order sought to be espoused by Mr. Patil, learned

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Counsel for the petitioner is, the petitioner ceased to be Chairman of the J.D. Society in 1977 and thereafter its Liquidator, who is In-charge of the assets of the said J.D. Society. Be that as it may, no fruitful purpose will be served by ordering detention of the petitioner at this stage in civil prison, when it comes to execution of the money decree, which is against the J.D. Society. It is expected of the petitioner to file affidavit disclosing the information as is called for by learned Civil Court pursuant to the provisions of Order 21 Rule 41 of the Code of Civil Procedure as was directed to him vide order dated 10<sup>th</sup> November, 2003.

5. Mr. Patil, learned Counsel for the petitioner, at this stage, in response to Court's query, volunteers that the petitioner shall file affidavit pursuant to the order dated 10<sup>th</sup> November, 2003 pointing out position qua his status as Chairman of J.D. Society alongwith documentary evidence, if any, in his favour, any assets of the

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J.D. Society, which are within knowledge of the petitioner and also copy of affidavit, which is placed on record in the present petition filed by one Ramdas Patil, who is working as Liquidator of the J.D. Society.

6. Since the petitioner is ordered to be detained for not complying with the order dated 10<sup>th</sup> November, 2003 and learned Counsel for the petitioner has volunteered to comply with the same order in the aforesaid manner. In the interest of justice, in my opinion, a chance is required to be given to the petitioner by showing his bonafides as assured to this Court herein above.

7. In the wake of above, the order impugned dated 24<sup>th</sup> July, 2012 passed below Exhibit-1, 11, 22, 80 and 86 in Regular Darkhast No.5 of 2003 by the Court of learned Joint Civil Judge, Senior Division, Dhule is hereby quashed and set aside. The petitioner shall file affidavit as referred supra, as is undertaken, before the Executing Court

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within a period of six weeks from today. The Executing Court shall thereafter proceed ahead with the execution, which is pending since 2003 in regard to the execution of money decree.

8. With above observations, the writ petition stands allowed.

( NITIN W. SAMBRE, J.)

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