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

**CIVIL APPLICATION NO.10459 OF 2017  
IN/WITH  
SECOND APPEAL (ST.) NO.22782 OF 2017  
WITH  
CIVIL APPLICATION NO.10460 OF 2017**

Santosh s/o Vasantrya Rupawate,  
Age: 42 years, Occu: Business,  
R/o Sayyad Baba Chowk,  
Tq. Sangamner, Dist. Ahmednagar

..APPLICANT/APPELLANT

VERSUS

1. Vijayanand s/o Sonaji Bhokare,  
Age: 70 years, Occu: Pensioner,  
R/o behind Royal Mutton Shop,  
Ramoshiwadi, Pune

2. Vasant s/o Bhimrao Rupawate,  
Age: 65 years, Occu: Nil,  
R/o Sayyad Baba Chowk,  
Tq. Sangamner, Dist. Ahmednagar

..RESPONDENTS

Mr K. N. Shermale, Advocate for applicant;  
Mr M. R. Sonawane,, Advocate for respondent No. 1

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

**DATE : 9th October, 2017**

**ORAL ORDER**

So far as Civil Application No.10459 of 2017 is concerned, for the reasons stated therein, the same stands allowed and delay caused in preferring second appeal stands condoned.

2. So far as second appeal is concerned, in Regular Darkhast No.510 of 2012, application Exh.38 came to be moved by the applicant-appellant,

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claiming that he is residing separate in mess from his father – original judgment debtor since last 15 years and as such, he is in possession of the suit premises. It is claimed that the appellant be given hearing in the said darkhast, so as to protect his interest against the decree holder.

3. The aforesaid application was resisted by the respondent-landlord/decree holder. The learned executing court, by a reasoned order, rejected the said application of the present appellant by order dated 16<sup>th</sup> April, 2014, which was challenged by him in appeal being Regular Civil Appeal No.32 of 2014. The said appeal also came to be dismissed on 2<sup>nd</sup> January, 2017. Since the petition against aforesaid order was filed, which was not maintainable, the same was withdrawn on 5<sup>th</sup> July, 2017. Thus, the present Second Appeal.

4. Mr Shermale, learned Counsel appearing on behalf of the appellant would submit that the present appellant is the son of original judgment debtor, against whom the decree for eviction and recovery of arrears has attained finality up-to the Apex Court. According to him, once the appellant has filed proceedings under the provisions of Order XXI, Rule 97 and Section 47 of the Code of Civil Procedure (for short “CPC”), it should have been tried as a civil suit and not in a simplicitor plenary jurisdiction.

5. By drawing support from the judgment of this Court, in the matter of **Sardar Hasanbhai Attar vs. Usman Papamiya Attar Shaikh & ors.**, reported in **2008 (2) ALL MR 186**, particularly paragraphs 11, 13, 14 and

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15, Mr Shermale would urge that the order impugned is not sustainable and directions need to be issued to the learned executing court to try objection Exh.38 as an independent suit.

6. While opposing the claim, Mr Sonawane, learned Counsel appearing on behalf of respondent no.1 – decree holder would urge that the appellant is very much bound by decree for eviction passed in the matter, as it was the father of the appellant who was tenant of the suit property, who has lost the litigation till the Apex Court. He submits that the appellant has moved the application with an intention to frustrate the decree for eviction and supports the impugned order on the very object with which provisions of Section 47 and Order XXI, Rule 97 CPC is incorporated.

7. Considered rival submissions.

8. Following events are required to be taken note of.

(i) Respondent no.1-decree holder filed Regular Civil Suit No.439 of 2007 for possession of suit premises and recovery of arrears of rent, which was decreed on 14<sup>th</sup> January, 2010.

(ii) The father of the applicant/appellant preferred Regular Civil Appeal No.13 of 2010, which also came to be dismissed on 1<sup>st</sup> August, 2011. At the behest of the father of the applicant/appellant, Civil Revision

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Application No.224 of 2011 came to be disposed of without any interference on 16<sup>th</sup> December, 2011, while accepting an undertaking that his father would vacate suit premises within six months. The father of the applicant thereafter filed S.L.P. (Civil) No.19432 of 2012. The said S.L.P. came to be dismissed by the Apex Court with an observation that the father of the applicant-appellant is granted one year's time to vacate the suit premises by furnishing an undertaking to that effect.

(iii) I am informed at bar and it is not disputed that in Civil Revision Application, as also in Special Leave Petition before the Apex Court, the father of the applicant-appellant has furnished undertaking to vacate the suit premises within one year. The said period was already over way back in 2013, however, the decree for eviction was not taken to its logical end.

8. Original defendant to the suit for eviction being judgment debtor have set up present appellant, his son to defeat the object and the purpose with which the decree was passed. It is not in dispute that the present applicant-appellant, when the suit for eviction and recovery of arrears was filed in 2007, was an adult member of the family. Apart therefrom, he has claimed that it is about 15 years back, the property has gone to his share in partition *inter se* between him and his father. It is not established as to how the appellant can become tenant by possession with original judgment debtor. The status of appellant as tenant is not recognized by the landlord. He has no lawful source for getting inducted as a legal tenant.

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9. Above plea sought to be raised, for the first time, before the executing court in regular darkhast, certainly appear to be with an intention to frustrate the object of the decree that was passed. In spite of the fact that decree was passed in 2007 and original judgment debtor has given an undertaking before this Court and Apex Court to vacate suit premises, the same was not honoured.

10. In the backdrop of above referred conduct of the applicant-appellant, the claim of the appellant that his objection is required to be dealt with in terms of provisions of Section 47 and Order XXI, Rule 97 of the CPC, is without any legal basis.

11. This Court must take a judicial note of the fact that the undertakings given before this Court in Civil Revision Application No.224 of 2011 and also in Special Leave Petition No.19432 of 2012 before the Apex Court, assuring vacation of the suit premises within the time stipulated therein, are not honoured. The said conduct on the part of the appellant and his father speaks voluminous about their ill intention and disrespect to the Court proceedings and its orders.

12. When an option was given, the appellant has refused to vacate the suit premises and rather insisted upon this Court to pass an order on merits. In this background, the judgment in the matter of Sardar Hasanbhai Attar (supra), relied upon by the applicant-appellant, particularly on the factual matrix, would not come to the rescue of the appellant, who appears

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to be a person having no respect for the rule of law.

13. As a consequence, in my opinion, the impugned judgments and decrees rendered by the Courts below do not warrant any interference in exercise of jurisdiction under Section 100 CPC, when no substantial question of law is involved in the appeal.

14. Considering the conduct of the appellant of not honouring the undertakings furnished before this Court, as also before the Apex Court, as referred supra, it will be appropriate to saddle costs of Rs.50,000/- (Rupees Fifty Thousand only) on the appellant and is accordingly saddled. The said costs be recovered from the appellant and his father judgment debtor in the form of dues under the Maharashtra Land Revenue Code.

The Tahsildar, Sangamner shall issue appropriate recovery certificate against the appellant and his father and the decree holder would be at liberty to pursue the same before the Tahsildar.

The amount of costs, as ordered, be recovered expeditiously, if required by attaching the property of the appellant and judgment debtor and same be paid to the decree holder.

Accordingly, Second Appeal stands dismissed.

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In view of dismissal of second appeal, Civil Application No.10460 of 2017 does not survive and stands disposed of accordingly.

**(NITIN W. SAMBRE, J.)**

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