

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

12 WRIT PETITION NO. 10242 OF 2015

SHARAD BACHAV KADLAG
VERSUS
GANPAT VITHAL FATANGARE AND ANOTHERS

...

Advocate for Petitioner : Mr. Chapalgaonkar
Shailesh S.

Mr. Kulkarni Mukul S., Advocate For R/1.

CORAM : P.R.BORA, J.

DATE : 3rd April, 2017.

PER COURT :

1) Heard. In the present petition, the petitioner has challenged the order dated 2nd May, 2015 passed by Joint Civil Judge, Junior Division, Kopargaon in Execution Proceedings No.42/2007.

. It is the contention of the petitioner that though the evidence adduced by the decree holder remained unchallenged, since there was no cross-examination by any of the judgment-debtors, The trial court has, for wrong reasons, has disposed of the entire execution proceeding.

2) The learned Counsel submitted that on 4th February, 2012, the decree holder, had filed an application at Exh.1 in RD 42/2007, requesting the Court to issue warrant for arrest against the judgment-debtors and in pursuance of the said application, the learned trial court has directed the decree holder to adduce evidence and accordingly evidence was adduced. The learned Counsel submitted that in such circumstances, at the most, that application could have been rejected by the Court, but not the entire execution proceedings.

3) I have carefully perused the impugned order. The contention of the petitioner that without considering the other aspects on merit, the Court has disposed of the execution proceeding while deciding the application at Exhibit-1, appears incorrect. The Trial Court has specifically observed that though the evidence of the decree holder has remained unchallenged, the evidence adduced by the decree

holder lacks all necessary particulars and hence no orders can be passed in such a proceeding. The learned Trial Court has observed that when it is the contention of the decree holder that the judgment-debtors are causing obstruction, interruption or disturbances and disturbing his possession, despite there being an injunction order against them, at least some evidence must have been placed on record by the decree holder, which has not been placed.

4) It does not appear to me that the Trial Court has committed any error in rejecting the entire execution proceedings, vide the impugned order. The writ petition being devoid of any substance, stands rejected.

(P.R.BORA,J.)

bdv/