

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

1 WRIT PETITION NO. 13126 OF 2017

SHOBHA MADHUKAR WADADEKAR
VERSUS
PRAKASH NAMDEORAO SURWASE

...
Advocate for Petitioner : Mr. Harshad H. Padalkar.
...

CORAM : **V. K. JADHAV, J.**
DATE : 13th November, 2017.

ORDER:

. I do not find any substance in this writ petition. Though Regular Civil Suit No.797 of 2009 was instituted by the Respondent / original Plaintiff and it was partly decreed initially by judgment and decree dated 1st March, 2012, the present Petitioner has not appeared in the said suit till its disposal by filing the agreement, which allegedly executed in the year 2006. The learned District Judge by judgment and order dated 12th February, 2013 has quashed and set aside the said decree and remanded the matter to the Trial Court to decide the same afresh after giving an opportunity to the Defendant to lead the evidence in support of his contentions. Only after that, the Petitioner had filed an application Exhibit 44 under Order I Rule 10 of the Code of Civil Procedure and that has been turned down by the Trial Court. The

Petitioner has not challenged the said order and thereafter, the said suit was decreed by the Trial Court in terms of the relief claimed by the Respondent / Plaintiff. It is not disputed that the decree passed in Regular Civil Suit No.797 of 2009 has now attained the finality.

2 The Petitioner is the wife of original Defendant / Judgment Debtor. It is not disputed that they are residing together. The Petitioner now claims her as a stranger occupying the decretal premises and asserting her rights on the basis of the said agreement, which allegedly executed in the year 2006. The learned counsel has made the futile efforts to show the entries in the bank account maintained by the present Petitioner to point out that the Petitioner has paid the EMI of the loan obtained for purchasing the said suit property by the Plaintiff. However, I do not find any substance in it. It appears that the original Judgment Debtor who happened to be the husband of the Petitioner, is obstructing the execution of the decree through his wife. The learned Judge of the Trial Court has rightly considered the same and rejected the application.

3 The learned counsel for Petitioner has placed his reliance in the cases of (i) **Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and another**, reported in, **(1997) 3 Supreme Court Cases**

694 and (ii) **Shreenath and another Vs. Rajesh and others**, reported in, **AIR 1998 Supreme Court 1827**. However, the facts of the present case are totally different. The ratio laid down in the aforesaid two cases cannot be made applicable to the facts and circumstances of present case. I do not find any substance in this writ petition. Hence, the following order:

ORDER

The writ petition is hereby dismissed.

[V. K. JADHAV, J.]

ndm