

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 1625 OF 2015

Amarsing Ramsing Aassi

... Petitioner

Versus

Deelip Govind Joshi & Ors.

... Respondents

...

Mr.M.N.Sandhyanshiv for the Petitioner.

Mr.M.M.Sathaye for Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 15th March, 2017.

P.C. :

1. Not on board. At the request of Mr.Sandhyanshiv, learned counsel for the petitioner taken up for admission.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and Order dated 3rd January 2015 below Exhibit 23 and also Judgment and Order dated 3rd January 2015 below Exhibit 25 passed by the learned Ad-hoc District Judge-2 and Assistant Sessions Judge, Malegaon in M.A.C.P Darkhast No. 62 of 2012.

3. By order dated 3rd January 2015 below Exhibit 23, the learned Judge has issued warrant of attachment and by order dated 3rd January

2015 below Exhibit 25 the learned Judge has rejected the application made by the petitioner-judgment debtor for stay to the execution proceedings.

4. In support of this petition, Mr.Sandhyanshiv submitted that judgment debtor has filed application under Order IX Rule 13 of the Code of Civil Procedure for staying the ex-parte award made by the Tribunal dated 8th August 2012 passed in MACP No. 308 of 2008. During the pendency of the proceedings, the decree holder filed an application under Order XXI Rule 43 of the Code of Civil Procedure for attachment by issuance of warrant to that effect. The learned trial Judge has allowed the application. The judgment debtor has filed application below Exhibit 25 for staying the execution proceedings which was rejected by the learned trial Judge. He submitted that as the application under Order IX Rule 13 filed by the judgment debtor for setting aside the ex-parte decree is pending, the Tribunal was not justified in passing the impugned order. He submitted that the judgment debtor has no source of income and he is aged 84 years.

5. On the other hand, Mr. Sathaye, the learned counsel for respondent no.1 submitted that the judgment debtor was duly served. He did not participate before the Tribunal and accordingly award was made. The Tribunal has directed the judgment debtors 1 and 2 to pay

Rs. 5,14,000/- compensation to the claimant including the amount of no fault liability with interest @ 6% p.a. from the date of the petition till credit of the amount. He submitted that on the date of the filing Exhibit 23, the judgment debtor is liable to pay an amount of Rs. 6,09, 822/-. The judgment debtor has also not challenged the award.

6. I have considered the submission advanced by the parties. Perusal of paragraph 7 of order below Exhibit 23 shows that R.C. Book in respect of vehicles shows that the same are registered in the name of judgment debtor. As no stay is granted in favour of the judgment debtor, the trial Judge has issued attachment warrant. In view thereof, I do not find that the learned Tribunal has committed any error in passing the impugned order below Exhibit 23.

7. As far as his order below Exhibit 25 is concerned, by that order, the Tribunal has rejected the stay application made by the judgment debtor. Having regard to the fact that money decree is passed against the judgment debtor arising out of accident by the Tribunal, no case is made out for granting stay to the award made by the Tribunal. Hence, no case is made out for invocation of powers under Article 227 of the Constitution. Writ Petition fails and the same is dismissed.

(R. G. KETKAR, J.)