

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

WRIT PETITION NO. 8740 OF 2016

Shri Sant Goroba Shikshan
Sanstha by its Treasures and Ors

..Petitioners.

Vs

Kum. Vimal parshuram Balid and
Ors.

.. Respondents

Mr. Sugandh B Deshmukh , Advocate for Petitioners.
Mr. Tejesh Dande i/b Tejesh Dande & Asso. For Respondent no.1.
Mr. Sanjeev J. Rairkar, Advocate for Respondent no.2.

CORAM : R.G.KETKAR,J.
DATE : 07/02/2017

PC:

1. Heard Mr.S.B. Deshmukh, learned counsel for the petitioners, Mr. Tejash Dande, learned counsel for respondent no.1 and Mr. Sanjeev Rairkar, learned counsel for respondent no.2 at length. Rule. Learned counsel for the respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged (i) Judgment and order dated 22.3.2016, (ii) Order dated 5.7.2016 and (3) order dated 25.7.2016 passed by the learned Extra Jt. Civil Judge, Senior Division, Pune. By order dated 22.3.2016 below Exhibit-1, the learned trial Judge issued show cause notice against the

petitioners, hereinafter referred to as Judgment debtors no.1 and 2, under Order XXI, Rule 37 of C.P.C. for recovery of Rs. 18,31,083/-. By order dated 5.7.2016, the learned trial Judge issued arrest warrant against judgment debtors no.1 and 2 as per Order XXI, Rule 37(ii) of C.P.C for recovery of Rs.18,31,083/-. By order dated 25.7.2016, respondent no.1 is permitted to withdraw the amount deposited by Judgment debtors no.1 and 2 subject to furnishing undertaking.

3. Mr. Deshmukh submitted that Judgment debtors have deposited Rs. 18,31,083/- by cheque before the Executing Court. Respondent no.1 has withdrawn Rs. 8,55,527/- . As the Judgment debtors no. 1 and 2 have deposited the amount, albeit after impugned orders dated 22.3.2016 and 5.7.2016, it is not necessary now to further proceed with notice issued under Order XXI, Rule 37 of C.P.C. In view thereof, orders dated 22.3.2016 and 5.7.2016 passed by the learned trial Judge are set aside.

4. As far as the order dated 25.7.2016 is concerned, by that order, the learned trial judge has permitted respondent no.1- decree holder to withdraw the amount subject to filing undertaking and in case the judgment debtor succeeds, she will re-deposit the amount in the Court.

5. Mr. Deshmukh submitted that basically the Executing Court will have to hear parties on calculations of back wages. He, therefore, submitted that before permitting decree holder to

withdraw the amount, it is necessary to direct the Executing Court to hear the parties on the amount which the decree holder is entitled to withdraw.

6. Mr. Dande did not seriously dispute this position and submitted that the Executing Court may be directed to hear the parties on this aspect and pass appropriate orders in a time bound manner.

7. In view thereof, order dated 25.7.2016 is set aside and the Executing Court is directed to hear the parties on the issue of calculations and thereafter determine the back wages payable to decree holder.

8. Liberty is reserved to the decree holder to file application for disposal of Darkhast proceedings in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order thereon.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR,J.)