

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT NAGPUR**

CIVIL REVISION APPLICATION NO.61 OF 2017

Raju s/o Badrilal Jaiswal,
Aged about 48 years,
Occupation Private

..Applicant

Versus

1. Laxmanrao s/o Hanguji
Yedatkar (dead), through
his legal heirs :
- 1a. Dilip s/o Laxmanrao Yedatkar,
Aged 57 years, Occu.Editor,
Matadar Daily Mamta Prakashan,
Saturna road, Amravati,
District Amravati
- 1b. Sau. Anita Sahebrao Karade,
Aged 54 years, Occu.Service
17, Vidya Nagar, Near Modern
School, Koradi road, Post
Gondhani railway, Nagpur 111144
- 1c. Sau. Kalpana Balaji Khadake,
Aged about 52 years,
Occupation Housewife
R/o Shivilal Nagar, Nanded,
District Nanded
- 1d. Sau. Sunita Pramod Kharabe,
Aged 50 years, Occu.Housewife,
R/o Vidya Nagar, Pusad,
Tahsil Pusad, District Yavatmal
- 1e. Sanjay s/o Laxmanrao Yedatkar,
Aged 47 years, Occu.Agri.,
R/o Near Rest House, Washim road,
Pusad, Tahsil Pusad, Dist.Yavatmal
- 1f. Sau. Chitra Vinodrao Mohod,
Aged 45 years, Occu. Housewife,
R/o Baner, Pashan road, Pune
District Pune
- 1g. Vijay s/o Laxmanrao Yedatkar,
Aged 43 years, Occu. Agri.,
R/o Near Rest House, Washim road,
Pusad, Tahsil Pusad, Dist.Yavatmal

.. Respondents

Mr O.W. Gupta, Advocate for applicant

CORAM : N.W. SAMBRE, J.

DATE : 2nd May 2017

PER COURT

1. By judgment and decree dated 19th March 2004, II Ad hoc Additional District Judge, Washim directed the present applicant – original judgment debtor to pay an amount of Rs.50,000/- to the plaintiffs.

2. It is the case of the present applicant – judgment debtor that he has entered into settlement with original decree holder no.1 viz. Laxmanrao Hanguji Yedatkar and has paid him an amount of Rs. 1,95,000/- on 6th August 2013. A document/acknowledgment to that effect is drawn and placed on record.

3. In the aforesaid background, an application Exh.32 came to be moved by the present decree holder for dismissal of the execution proceedings against him, as the claim was satisfied. Another application Exh.44 came to be moved by the decree holder no.5 stating that the amount is already received and as such, he has no objection for dismissal of the execution proceedings.

4. Learned executing Court, in execution proceedings being Special Darkhast No.4 of 2012, pending on the file of learned Civil Judge, Junior Division, Manora was pleased to dismiss the applications Exh.32 and 35 moved by the present applicant and by the decree holder no.5, respectively and further upheld the objection raised by

the legal representatives of deceased decree holder no.1, as such present revision.

5. Mr Gupta, learned Counsel for the applicant – judgment debtor would urge that once the document acknowledging the payment being receipt dated 6th August 2013, executed by original decree holder no.1 is brought on record, the least that was expected of the executing Court was to record the satisfaction of the decree and dismiss the execution proceedings against the applicant. Apart from relying upon the acknowledgment to that effect, he would also bank upon the document Exh.44, moved by decree holder no.5 supporting his claim for dismissal of the execution proceedings. Mr Gupta then would urge that if the document acknowledging the receipt of the amount of Rs.1,95,000/- was disputed by the legal representatives of decree holder no.1, the Court should have recorded finding to the extent of satisfying the claim of the decree holder no.5 and should have evaluated the claim on merit qua the execution at the behest of legal representatives of original decree holder no.1.

6. With the assistance of Mr Gupta, in the backdrop of his contentions, I have perused the impugned order delivered by the executing Court on 2nd December 2016. The executing Court has considered the issue brought before it, also analysed the issue of limitation and proceeded to reject the contention of the present applicant – original judgment debtor. The executing Court then recorded that Exh.44, an application moved by decree holder no.5 was by way of after thought, particularly when it was filed after an

application Exh.32 by the judgment debtor no.2. The Court then proceeded to consider the provisions of Order XXI, Rules 1 and 2 of the Code of Civil Procedure, i.e. mode of paying the money for the decree and the payment out of the Court to the decree holder. The Court appreciated the claim put forth by the applicant in the backdrop of said provisions of law and on merit has rejected the claim, upon analysing the material brought before it and observed that the legal representatives of decree holder no.1 are not acknowledging the receipt of the payment made.

7. The analysis of the material, as is brought before the learned executing Court has prompted it to reject the claim of the applicant as regards satisfaction of the decree passed on appreciation of the material in support of such claim.

8. In exercise of the jurisdiction by the executing Court while rejecting the application, I could hardly notice any failure to exercise the jurisdiction or the order passed is without any jurisdiction. The executing Court, in my opinion, having considered the claim as was put forth by the applicant, has rightly appreciated the same and rejected the application after considering the claim on merit. No case for interference in revisional jurisdiction is made out. The revision lacs merit, stands dismissed.

(N.W. SAMBRE, J.)