

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4275 OF 2017

Hari Rabhaji Mhase,
Age : 57 years, Occupation : Business,
R/o Deokar Galli, Maliwada,
Ahmednagar,
Taluka and District Ahmednagar.

...PETITIONER

-VERSUS-

Nanda Hari Mhase,
Age : Major, Occupation : Nil,
R/o Shendi,
Taluka and District Ahmednagar.

...RESPONDENT

...

Advocate for the Petitioner : Shri Jadhavar Santosh S. a/w Shri
S.R.Shirsat.

Advocate for the Respondent : Shri Pawar P.S..

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th December, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the order dated 14.09.2016
passed by the Executing Court by which, the application Exhibit 30 filed
by the Petitioner in Regular Darkhast No.120/2006 seeking dismissal of

the execution proceedings, has been rejected.

3 I have considered the strenuous submissions of the learned Advocates for the respective sides.

4 The thrust of the Petitioner's contention is that he entered into a private settlement with his wife towards separation and payment of maintenance by gifting her a parcel of land on 02.09.1985. The Respondent/wife instituted the proceedings for seeking maintenance under Section 125 of the Code of Criminal Procedure as well as Special Civil Suit No.152/1999. She was awarded the maintenance by both the courts. The Petitioner subsequently filed Hindu Marriage Petition No.104/2004 for dissolution of the marriage. By judgment dated 09.09.2008, the marriage between the parties was dissolved. Special Civil Suit No.152/1999 was decreed by the judgment dated 18.12.2004.

5 The grievance is that though the Petitioner had gifted a piece of land to the wife towards full and final settlement of maintenance in 1985, none of these courts have taken cognizance of the said aspect and hence, he moved the application Exhibit 30 in the execution proceedings praying for dismissal of the execution proceedings.

6 I find that the defence taken by this Petitioner as regards gifting the land towards full and final settlement of maintenance and separation, had to be proved in the proceedings instituted by the parties. In the matters where the wife had sought maintenance, this Petitioner was

entitled to put forth the said defence. He had indeed put forth that defence and both the courts dealing with the proceedings for maintenance under Section 125 of the Code of Criminal Procedure and under Section 24 of the Hindu Marriage Act, have not been impressed. The contention was turned down.

7 It requires no debate that the Executing Court cannot go behind the decree. Similarly, the Judgment Debtor cannot put forth the claim that the decree sought to be executed is unsustainable or that he has privately satisfied the decree in a different form. The Executing Court has to purely go by the records available and if the decree has been satisfied, the Executing Court must be convinced that the decree is fully satisfied.

8 In the instant case, the Executing Court was justified in observing that in such execution proceedings, the disputed question as to whether, the gift of land in 1985 could be set off against the direction to pay the maintenance, cannot be gone into. The courts have granted the maintenance subsequently.

9 In view of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.