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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7393 OF 2018

Devidas @ Devid s/o Gurbe Gaikwad
Age - 68 years, Occ - Labour work
R/o Shirdi, Taluka - Rahata
District - Ahmednagar

PETITIONER

VERSUS

1. Narsabai Baburao Karade
Age - 69 years, Occ - Business
R/o Subhash Lodge / Hotel
Shirdi, Taluka - Rahata
District - Ahmednagar

RESPONDENTS

2. David Jivan Jadhav
Age - 46 years, Occ - Business
R/o Jivan Hotel Gate No. 2,
Shirdi, Taluka - Rahata
District - Ahmednagar

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Mr. P. S. Pawar, Advocate for the petitioner
Mr. Avinash Patil h/f Mr. S.S.Chapalgaonkar, for respondent No.1
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 17th JULY, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. The petition has been moved against order dated 3rd November, 2017 passed by Civil Judge, Junior Division, Rahata

on Exhibit-28 in Regular Darkhast No. 18 of 2009 and order in its review dated 15th March, 2018.

3. Learned advocate for the petitioner contends that record about *sanad* in favour of respondent No. 1 had been brought about fraudulently and, as such, allotment / record has been challenged by initiating proceedings before concerned authorities. Petitioner claims to be in possession of the property. Learned advocate submits that in such a case, if petitioner is vindicated in the proceedings as have been initiated before concerned authorities, he would suffer irreparable loss in case the decree passed in Regular Civil Suit No. 254 of 2004 is executed. He, therefore, submits that orders impugned are required to be intercepted in the interest of justice and petitioner's possession deserves to be protected.

4. On the other hand, learned advocate for respondent No. 1 submits that the decree holder is just about to have enjoyment of the fruits of long drawn legal battle since 2004. Respondent No. 1 is decree holder under the judgment and decree in Regular Civil Suit No. 254 of 2004 passed by civil court holding respondent No. 1 to be entitled to recover possession of suit property. He adverts to that the petitioner has failed in further

proceedings against decree in the suit in regular civil appeal. So is the case in second appeal by him. The decree has become final and binding on present petitioner. He submits that if at all there is any fraud, the same is yet to emerge and the petitioner is yet to be vindicated in the same. In the absence of such vindication, a decree passed after long run battle in civil litigation would not be amenable to any interception. He submits that the executing court is bound by the decree and would not be able to go beyond the same, much less, for the reasons as have been vaunted by the petitioner.

5. Perusal of the impugned order passed shows that all the relevant aspect about decree having become final have been considered and the same has been put in execution. The court had further considered it cannot travel beyond the decree which has attained finality. The court has found that as on the date there is no material worth consideration lending credibility to the contention about there being fraud played. Having regard to that the decree of the civil court has become final, the executing court, in the circumstances will have to abide by the same and would not be able to go beyond the decree. All the relevant aspects appear to have been duly considered under the impugned orders. Observations thereunder appear to be apt in

the given circumstances. Thus, this is not a case wherein discretion is required to be invoked in favour of present petitioner.

6. Writ petition, therefore, is dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]