

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 WRIT PETITION NO. 7357 OF 2017

CHETAN NARAYAN DONGRE
VERSUS
RAJSHRI @ APRUVA CHETAN DONGRE

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Advocate for Petitioner : Mr. Gandhi Amol S.
Advocate for Respondent-sole : Mr. L. K. Pradhan &
Mr. U. M. Ubale

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CORAM : V. K. JADHAV, J.
DATED : 06th MARCH, 2018

PER COURT:-

1. By consent, heard finally at admission stage.
2. This Writ Petition can be disposed of by directing the executing court to decide the application Exhibit 36, whereby the present petitioner has raised objection before the executing court about maintainability of the execution petition for want of jurisdiction.
3. The learned counsel for the petitioner submits that in view of the provisions of Section 39 of the Code of Civil Procedure,

1908, since the petitioner resides within the local limits of jurisdiction of the Court at Pune, and if the petitioner has raised objection to that extent before the executing court by filing application Exhibit 36, it is incumbent upon the executing court to decide the application Exhibit 36 at the first instance. However, the learned Judge of the executing court, without deciding the application Exhibit 36, has directed the petitioner to deposit the amount of arrears of maintenance and also issued warrant of arrest.

4. The learned counsel for the respondent-wife submits that though the petitioner resides in the local limits of jurisdiction of the Pune Court, he has got landed property within the local limits of jurisdiction of the executing court. Further, the petitioner is not depositing the amount of arrears which is more than 80,000/- at present. Though the executing court has directed the petitioner to deposit certain amount, the petitioner has failed to deposit the same. The learned counsel submits that the petitioner is trying to evade execution of the decree under one or another pretext.

5. It appears that the petitioner resides within the local limits of jurisdiction of the different court and as such, the petitioner has filed application Exhibit 36. The respondent-wife is at liberty to point out to the executing court about the landed property owned and possessed by the petitioner situated within the local limits of jurisdiction of the executing court. However, it is for the executing court to decide the application Exhibit 36.

6. Learned counsel for the petitioner, on instructions, submits that the petitioner is ready to deposit Rs.10,000/- in addition to the earlier directions given by the executing court.

7. In view of the above, I proceed to passed the following order:

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The executing court is hereby directed to decide the application Exhibit 36 at the earliest only after deposit of the additional amount of Rs.10,000/- (Rupees Ten Thousand only) by the petitioner before the executing court within a period of two weeks from today.

- III. In case the amount as directed is deposited by the petitioner before the executing court, the respondent-wife is permitted to withdraw the same.
- IV. The executing court shall keep the applications Exhibits 35 and 44 and the orders passed on it in abeyance till the application Exhibit 36 is decided on its own merits.
- V. The Writ Petition is accordingly disposed of. No costs.

(V. K. JADHAV, J.)

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