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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13220 OF 2017

Anil Mohanlal Rathi PETITIONER
Age - 48 years, Occ - Business
R/o Near Piwala Bungalow,
Talreja Nagar, Jalna

VERSUS

1. Sureshkumar s/o Kedarnath Malpani RESPONDENTS
Age - 47 years, Occ - Business

2. Anilkumar Kedarnath Malpani
Age - 42 years, Occ - Business
Both R/o Rajendraprasad Road,
Sadar Bazar, Jalna
Taluka and District - Jalna

3. Suryabhan Nagbhushan Halvi
Age - 62 years, Occ - Business
R/o Shastri Mohalla, Jalna
Taluka and District - Jalna

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Mr. Anand P. Bhandari, Advocate for the petitioner
Mr. P. R. Katneshwarkar, Advocate for respondents No. 1 and 2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th SEPTEMBER, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.

2. The petitioner is aggrieved by rejection of request to issue summons to one Pankaj Radhyesham Agrawal as a witness in the

objection to execution of decree pending before civil judge, junior division bearing Regular Darkhast No. 247 of 2003.

3. Learned advocate for the petitioner adverts to various orders passed since October, 2017 issuing summons and its failure to serve on concerned person Pankaj Radhyesham Agrawal. He submits that in such a scenario, rejection of the application for issuance of summons to said person under order dated 31st October, 2017 is improper, especially having regard to report dated 30th October, 2017 of the bailiff.

4. On the other hand, Mr. Katneshwarkar, learned advocate appearing for the respondents - decree holders vehemently submits that all these are strategies to procrastinate execution of decree passed way back in 2002. He submits that execution has been pending since then and is getting prolonged on one or the other pretext under the strategies employed either by judgment debtors or persons acting on their behalf. He submits that Pankaj Radhyesham Agrawal appears to be son of Radhyesham Agrawal, who had filed objection to the execution, which has been dismissed by the executing court.

5. Learned advocate for the petitioner, however, purports to point out that an appeal against said rejection is pending. However, according to instructions of Mr. Katneshwarkar, that

appeal as well has been dismissed / abated. He submits that the petitioner is employing delaying tactics to frustrate execution of decree and no indulgence be given to the request being made under the writ petition.

6. However, looking at that witness concerned has been issued summons by the court twice and report has been received back referring to that Pankaj Radhyesham Agrawal had not been at Aurangabad and had been out of station and the report in respect of the same had been given by his brother informing that he would return on 13th November, 2017. In the circumstances, it appears to be expedient to give one more chance to the petitioner to have service of summons on Pankaj Radhyesham Agrawal. It is petitioner's responsibility to make available before the court Pankaj Radhyesham Agrawal. As and by way of last chance and indulgence, witness summons be issued by the trial court to Pankaj Radhyesham Agrawal, returnable in three weeks from the date of receipt of writ of this order. Petitioner himself shall make endeavour and secure presence of Pankaj Radhyesham Agrawal before the court on the scheduled date. For failure of service of summons and / or secure presence of Pankaj Radhyesham Agrawal shall not result in detaining execution proceedings which should be proceeded with.

7. Writ petition stands allowed as aforesaid. Rule is made absolute in aforesaid terms. It is expected that execution proceeding would be proceeded with in right earnest.

Dinesh Ramrao Pawar
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Date: 2018.09.25 10:46:43 +0530

[SUNIL P. DESHMUKH, J.]

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