

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO. 14888 OF 2017

RAMRAO NAGORAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR
BEED

.....
Advocate for Petitioner : Mr. Deshmukh Mandar Arun
AGP for Respondent-State : Mr. S. N. Kendre
.....

CORAM : V. K. JADHAV, J.
DATED : 27th MARCH, 2018

PER COURT:-

1. Heard finally with consent at admission stage.
2. It appears that the learned District Judge has dismissed the L.A.R.D. by order dated 20.04.2016 for want of taking steps and even though the decree holder has filed an application bearing Misc. Civil Application No. 47 of 2016 for restoration of the L.A.R.D., the learned District Judge-3, Ambajogai has dismissed the said Misc. Civil Application. In terms of Order 21 Rule 17 of the Code of Civil Procedure, 1908, if certain defects are there in an application seeking execution of a decree as provided by Rule 11 Sub-rule (2) of Order 21, and if those defects are not cured, the executing court shall allow the defects to be remedied then

and there or within a time to be fixed by it and if the defect, even thereafter, is not remedied, the court shall reject the application. Except this provision, there is no other provision in Order 21 to reject a Darkhast for want of steps. The learned District Judge ought to have restored the execution petition by allowing Misc. Civil Application No. 47 of 2016 on this ground alone.

3. In view of the above discussion, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 18.09.2017 passed in Misc. Civil Application No. 47 of 2016 by the District Judge-3, Ambajogai, is hereby quashed and set aside.
- III. Misc. Civil Application No. 47 of 2016 is hereby allowed in terms of its prayer clause.
- IV. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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