

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1420 OF 2018

TULJIRAM TUKARAM DARADE AND OTHERS  
VERSUS  
UTTAM GENA DARADE AND OTHERS

Advocate for Petitioners : Shri R.K. Jadhavar.

CORAM : RAVINDRA V. GHUGE, J.  
DATED : 26<sup>th</sup> February, 2018

PER COURT :

1. The petitioners are aggrieved by the impugned order dated 7/12/2017, passed by the executing Court in Special Darkhast No. 38 of 2016, by which, the petitioners are directed to be arrested under Order XXI Rule 37 of Code of Civil Procedure ("CPC") after issuance of show cause notice and after considering the detailed reply of the petitioners, which runs into four pages.

2. After considering the submissions of the learned counsel for the petitioner, I find the following discrepancies :

(a) The decree at issue is dated 14/06/2016, delivered in R.C.S. No. 352/2012.

(b) The decree put to execution in Special

Darkhast No. 38/2016, is said to be dated 21/06/2016, when, in fact, the decree is dated 14/06/2016.

(c) The decree conditionally stayed by the first appellate Court in R.C.A. No. 101/2016 dated 02/02/2017, is said to be dated 14/10/2016, when, in fact, the decree is dated 14/06/2016.

3. Considering the above, *prima facie*, it appears from the submissions of the learned counsel for the petitioner judgment debtors that the impugned order directing the judgment debtor Nos. 1 to 4 to be sent to civil prison, is based on the impression that the decree put to execution has not been stayed by the appellate Court. In fact the appellate Court has stayed the said decree, but has wrongly mentioned the date as 14/10/2016.

4. Considering the above, it is necessary that these petitioners should approach the executing Court and file an appropriate application setting forth factual details, so that the executing Court could reconsider application Exhibit 9 and may, if it is so convinced, recall the

impugned order dated 07/12/2017 and pass an appropriate order taking all facts into account.

5. Learned counsel for the petitioners, therefore, submits that the petitioner desires to withdraw this petition and prefer an appropriate application under Section 151 of the Code of Civil Procedure, before the Trial Court for seeking the recalling of the impugned order dated 07/12/2017.

6. As such, this petition is disposed of as withdrawn with liberty as prayed for.

( RAVINDRA V. GHUGE, J. )

S.P.C.