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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.260 OF 2017
WITH
CIVIL APPLICATION NO.431 OF 2017
IN
SECOND APPEAL NO.260 OF 2017**

Obedur Rehman Fzlur Rehman	..	Appellant
-vs-		
Haji Nizar Ahmed Shabbir Ahmed		
and others	...	Respondents.

**ALONGWITH
SECOND APPEAL NO.261 OF 2017
WITH
CIVIL APPLICATION NO.430 OF 2017
IN
SECOND APPEAL NO.261 OF 2017.**

Mohammad Ismail Mohammad		
Swaleh	...	Appellant.
V/s.		
Haji Nisar Ahmed Shabbir		
Ahmed and ors	...	Respondents

Mr. Milind Sathaye, for the appellant.
Mr. Mahendra N. Sandhyanshiv, for respondent Nos.
1 to 3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] Admit.

3] With the consent of learned counsel for both the parties, appeals are taken up for final hearing at the stage of admission itself.

4] These Second Appeals are preferred against the concurrent finding of the fact recorded by the trial and the Appellate Court, rejecting the applications filed by both the appellants, raising obstruction to the execution of the possession decree, under Order 21 Rule 97 of Code of Civil Procedure.

5] The appellants claim to be the owners of the property and admittedly do not dispute that the judgment debtor in the suit for eviction filed under the provisions of the Rent Act, is the person working with the appellant in Second Appeal No.261 of 2017, in their shop and is the brother of appellant in Second Appeal No.260 of 2017.

6] In such circumstances, both the Appellate Court and the executing Court were perfectly justified in holding that the appellants cannot claim any independent right or interest in the suit property so as to entertain their obstruction. Whatever evidence they might be having to prove their claim, the appellants could have produced in the suit as the appellants had an opportunity to get themselves impleaded in the suit. It cannot be accepted that they had no knowledge of the suit when it was filed and pending against the very same person, who was their brother and was working as an employee in their business,

respectively.

7] As regards the partition of the suit property, it must be stated that the said issue is also decided and considered by this Court in Civil Revision Application No.343 of 2016, which was filed by the Judgment Debtor in this Court, challenging the concurrent decree of eviction. Therefore, no substantial question of law arises in these Second Appeals.

8] Both these Second Appeals, therefore, hold no merit and hence stand dismissed.

9] In view of dismissal of both these Appeals, Civil Applications pending therein are also disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]