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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4343 OF 2015

Naganath B. Shahpurkar & Ors.

...Petitioners

V/s.

Umakant V. Doijade & Ors.

...Respondents

Mr.Rajaram Bansode for the Petitioners.

Mr.Sachin Tigde for the Respondent No.1.

Mr.Sandeep Pathak for the Respondent No.2.

CORAM : R.D. DHANUKA, J.

DATE : 12TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under under Article 227 of the Constitution of India, the petitioners have impugned the order dated 28th February, 2014 passed by the Joint Civil Judge, Senior Division, Solapur below Exhibit – 40 in Regular Darkhast No.172 of 2008 filed by the decree-holder inter-alia praying for the appointment of a Court Commissioner and for taking further steps to execute the registered Sale Deed on behalf of the Court in respect of the suit property in execution of the consent terms filed by the parties before this Court in Second Appeal No.169 of 1992.

2. A perusal of the impugned order dated 28th February, 2014 indicates that the said order is passed in furtherance of the consent

terms filed by the parties in the Second Appeal No.169 of 1992.

3. Mr.Bansode, learned counsel appearing for the petitioners submits that though the consent terms filed before this Court, were signed by his clients, none of his clients were however present in Court when the consent terms were taken on record on 17th April, 2008 and the second appeal was disposed of in terms of the consent terms. The consent terms were thus not binding on his clients.

4. A perusal of the order dated 17th April, 2008 passed by this Court while disposing of the Second Appeal No.169 of 1992 in terms of the consent terms clearly indicates that this Court has recorded in the said order that the contents of the consent terms had been explained to the concerned parties. There was no objection to any kind of identification as well as signatures of the parties. Both the parties have made a statement that the consent terms were within the framework of law and record. The parties have no objection if an order is passed based on the consent terms. Two of the parties were present in Court. This Court recorded that two of the parties were present in Court however, both the parties and their advocates had no objection if the consent terms were taken on record in absence of other parties. The petitioners never applied for recall of the said order dated 17th April, 2008 at any stage on the ground that the said consent terms were filed fraudulently by other parties after taking the

signatures of the petitioners on those consent terms.

5. Learned counsel for the petitioners submits that in the consent terms, the parties have agreed that the order passed by the First Appellate Court be confirmed. He submits that in the said appeal decided by the learned Trial Court, the petitioners have succeeded and therefore, the consent terms could not have been contrary to the order passed by the Appellate Court in favour of the petitioners.

6. A perusal of the consent terms clearly indicates that the parties have agreed that the respondents to the consent terms could sell the suit property in favour of one Mr.Nitin Ramchandra Bargaje. The decree-holder had applied for execution of the said consent terms. In my view, the petitioners could not have opposed the application for execution of the consent terms in Regular Darkhast No.172 of 2008 or the application filed below Exhibit – 40.

7. I do not find any infirmity in the impugned order passed by the learned Appellate Court. The petition is totally devoid of merit and is accordingly dismissed. There shall be no order as to costs.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.09.14 18:32:30 +0530

(R.D. DHANUKA, J.)