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

**WRIT PETITION No. 8982 OF 2018**

|                                                                 |     |            |
|-----------------------------------------------------------------|-----|------------|
| Narendra Aakshmaharaj Pethkar<br>(since deceased, through LRs.) | ... | Petitioner |
| Vs.                                                             |     |            |
| Shahaji Baburao Pethkar                                         | ... | Respondent |

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Mr. Atul G. Damle, Sr. counsel, for the Petitioner.

Mr. V. A. Thorat, Sr. counsel i/b Ms. Prachi A. Tatake, for the Respondent.

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**CORAM : R.D. DHANUKA, J.**

**DATE : OCTOBER 30, 2018**

**P.C.**

1. By this writ petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 29<sup>th</sup> April,, 2012 passed by the executing court below application Exhibit 82, filed in Special Darkhast No. 135 of 2008. The learned trial court has passed the decree in the year 2008. The decree-holder filed execution application on 24<sup>th</sup> July, 2008. The petitioner (original judgment-debtor) filed an application under S. 47 of the Code of Civil Procedure, 1908 for setting aside the said decree on two grounds, viz. (i) the decree was obtained fraudulently by the

decree-holder; and (ii) in the documents executed by the decree-holder himself, it was admitted position that the petitioner was the legal heir of the deceased.

2. By an order dated 25<sup>th</sup> April, 2015 passed by this Court in Writ Petition No. 3162 of 2013, filed by petitioner's predecessor (original judgment-debtor), this Court permitted the petitioner to file application before the executing court to question the executability of the decree in question on the grounds raised before this court in the petition. Pursuant to the liberty granted in the said writ petition, executing court granted liberty to both sides to lead evidence. After considering the oral and documentary evidence, led by the parties pursuant to the liberty granted, the executing court passed an order on 29<sup>th</sup> April, 2017 rejecting application (Exhibit 72) with costs.

3. Mr. Damle, learned senior counsel for the petitioner invited my attention to the order passed in Writ Petition No. 3162 of 2013 and the findings recorded by the executing court in the order dated 29<sup>th</sup> April, 2017 and would submit that since the

petitioner was not granted proper liberty by the executing court in spite of order passed by this Court, the petitioner had filed an application before the executing court on 4<sup>th</sup> August, 2018, *inter alia* praying for further liberty. He fairly invited my attention to the order dated 3.10.2018 passed by the learned executing court, rejecting the said application (Exhibit 261) with costs, quantified at Rs. 10,000/-.

4. Mr. Thorat, learned senior counsel for the decree-holder, on the other hand, submitted that there was gross abuse of process of law by the petitioner by filing frivolous application before the executing court. Even after availing the final opportunity granted by this Court, the petitioner filed further application before the executing court to lead further evidence. He submits that the original decree has attained finality right upto the Hon'ble Supreme Court. He submitted that the application under S. 47 of the Code of Civil Procedure, 1908, could not have been filed on the ground of fraud and suppression of material facts. Both the grounds urged by the petitioner in the application under S. 47 are thoroughly misconceived and have been rightly rejected by the executing court

by passing a detailed judgment and order dated 29.4.2017. However, pursuant to the liberty granted by this court in Writ Petition No. 3162/2013, the executing court once again granted liberty to both the parties to lead evidence on the issues raised by the petitioner in the application filed under S. 47 of the Code of Civil Procedure, 1908.

5. A perusal of the impugned order passed by the executing court, it makes clear that parties were full opportunities. The executing court after considering the oral evidence led by both the parties has rendered various findings of fact. It is held by the executing court that judgment-debtor No. 1 has failed to establish that decree in Special Civil Suit No. 1334/1995 was obtained by the decree-holder by playing fraud and was unexecutable. The executing court also rejected the contention of the petitioner that there was any suppression, and that out of 42 R land, 24R land was already sold. It is not disputed by the petitioner. The execution of the said decree was obstructed by the petitioner by filing application under S. 47. The petitioner sold part of his property. After considering these facts, the executing court passed a detailed order

rejecting all the frivolous contentions raised by the petitioner in the said application filed under S. 47.

6. In my view, the petitioner was not satisfied with the order passed by the executing court, and filed another frivolous application (Exhibit 261) on 4.8.2018 during the pendency of this petition, seeks liberty to lead further evidence. The learned executing court passed a detailed order dated 3<sup>rd</sup> October, 2018 dismissing the said application with costs, quantified at Rs.10,000/-. A perusal of the record indicates that the petitioner has filed several applications before the executing court so as to frustrate the execution of the decree, which attained finality. In my view, filing of this petition is abuse of process of law. The writ petition is therefore dismissed with costs, quantified at Rs. 50,000/-, to be paid by the petitioner to the respondent within one week from today.

Sd/-  
[R. D. DHANUKA, J.]