

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 111 OF 2019

SUSHIL SHIRISH OSTWAL
VERSUS
LACHMANDAS BANSILAL RATHOD DIED THROUGH LRS
SHIVSHANKAR LACHMANDAS RATHOD AND ORS

...
Mr. Amol S. Gandhi, Advocate for petitioner
Mr. Rajendrraa Deshmukkh, Advocate h/f. Ms. Anjali Bajpai Dube,
Advocate for respondent no.2-caveator
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 04-01-2019

ORDER :

1. The matter has been pressed for hearing, stating that there is grave exigency since long standing possession of the petitioner is likely to be lost and he is likely to be condemned unheard.

2. Learned counsel for petitioner purports to rely on decision of supreme court in the case of *Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal and another* reported in 1997 AIR (SC) 856 : 1997 (3) SCC 694, contending that petitioner is a stranger to execution proceedings and despite him being found to be in possession, without adjudication, the warrant has been issued.

3. On the other hand, learned counsel Mr. R.S. Deshmukh for respondent no. 2 submits that petitioner has no legs to stand

on as there are antecedents in the matter wherein petitioner has been concerned. His kins and brethren had been before this court on couple of occasions and their attempts have failed. He submits that petitioner and his kins are making all out efforts to frustrate execution of decree decided before 1974. He purports to rely on two decisions of this court *viz.* writ petitions no. 6752 of 2012 and 11344 of 2017. He further submits that petitioner's application purportedly pursuant to Order 21 Rule 97 of the code of civil procedure has been rejected long back in December, 2017 and no notice of proceedings against that order has been received at respondent's end yet. In such a case, no interference is warranted in present writ petition. However, learned counsel for petitioner, on instructions states that an appeal indeed has been preferred against the order passed in December, 2017 and same is pending.

4. In the circumstances, it appears that appellate court may have *seisin* over the matter, if the same is pending. It is for the petitioner to prosecute the same and get some order. Learned counsel for petitioner therefore urges for relief in order to enable him to prosecute said proceeding.

5. While the submissions are so advanced on behalf of the parties, it is incumbent that the petitioner shall show his bonafides by depositing substantial amount in the executing court.

6. As such, petitioner shall deposit a sum of Rs.10,00,000/- (Rs. Ten Lakh) with the executing court within a period of one week from today.

7. In case the amount is deposited with the executing court within stipulated period, petitioner may explore possibility of prosecution of stated pending proceeding, if any. For such purpose, the effect and operation of the impugned order dated 18-12-2018 passed by 11th Joint Civil Judge Senior Division, Ahmednagar below Exhibit - 444 in Regular Darkhast No. 216/1982 be kept in abeyance for a period of three (3) weeks from today.

8. In case of failure to deposit the amount within stipulated period, this order shall stand recalled and efficacy of the protection shall cease to operate on expiry of three (3) weeks without further reference to the court.

9. Fate of the amount deposited would be subject to execution proceedings.

10. Writ petition stands rejected and disposed of.

[SUNIL P. DESHMUKH]
JUDGE

arp/