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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2067 OF 2018

1. Mr. Murlidhar Bhimaji Vaidya,
Age: 50 Years, Occu: Agril.,
R/o: Korhale, Tal. Rahata,
District Ahmednagar.
2. Mr. Ganga Bhimaji Vaidya,
Age: 70 years, Occu.: Agril.,
R/o: Korhale, Tal. Rahata,
District Ahmednagar. ...Petitioners

Versus

1. Akhila Bano W/o Sayyed Mohd. Akbar (since deceased)
Age: Major, Occu: Household,
R/o: Rural Hospital, Near Government Civil Hospital,
Mantha, Tal. Partur, District Jalna.
 - 1-A Sayyed Moijodin Sayyed Mohd Akabar
 - 1-B Sayyed Jafer Sadek Sayyed Mohd Akbar
 2. Atika Bano W/o Mohd Yusufkhan
Age: Major, Occu: Household,
R/o Bismilla Colony, Near Himayat Bagh,
Aurangabad, District Aurangabad.
 3. Fatema Siddiqui Khaja Moinoddin,
Age: Major, Occu: Household,
R/o: Plot No.81 Aref Colony, Aurangabad,
District Aurangabad.
- Through General Power of Attorney,
Liyakat Ali Usmanali Inamdar,
R/o. Korhale, Tal. Rahata,
District Ahmednagar. ...Respondents

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Mr. V.D. Sapkal, Advocate for Petitioners.
Mr. Amol Joshi h/f Mr. R.S. Deshmukh, Advocate for
Respondent Nos.1-A, 1-B, 2 & 3.

...

**CORAM : P.R. BORA, J.
DATED : 28th JUNE, 2019.**

ORAL JUDGMENT:-

. The writ petition is heard finally with consent of the learned counsel appearing for the parties.

2. Order dated 31.01.2018 below application Exhibit-286 in Regular Darkhast No.309 of 2004 passed by the learned Joint Civil Judge, Junior Division, Rahata, Taluka Rahata, District Ahmednagar is questioned in the present petition. Vide the impugned order, the learned Executing Court has directed that judgment debtors no.3 and 4 be detained in civil prison for willful disobedience of the decree of injunction for a period of three months starting from 09.02.2018. The said judgment debtors no.3 and 4 are the petitioners in the present petition. The impugned order is challenged mainly on the ground that when two similar applications were already rejected by the learned Executing Court, third such application filed by the present respondents could not have been entertained by the Executing Court.

3. Shri Sapkal, the learned counsel appearing for the petitioners brought to my notice the order dated 30.08.2017 passed by the Executing Court below application at Exhibit-243 in Regular Darkhast No.309 of 2004. The said application was rejected by the Executing Court. The

learned counsel submitted that similar prayers which were made in the application Exhibit-243 were made in the application subsequently filed at Exhibit-286. The said application has been, however, allowed by the Court. The learned counsel submitted that one and the same judge has decided both these applications. Relying on the judgment of Hon'ble Karnataka High Court in the case of "**Basavant Dundappa Vs. Shidalingappa Sidaraddi, ILR 1986 KAR 1959**", submitted that it was impermissible for the Trial Court to take contrary view in the subsequent order when he has earlier rejected the application containing similar grounds and similar prayers. The learned counsel in the circumstances, prayed for setting aside the impugned order.

4. Shri R.S. Deshmukh, the learned counsel appearing for the respondents supported the impugned order. In order to buttress his argument, the learned counsel placed his reliance on the judgment of this Court in the case of "**Yashodabai Ganesh Naik Gaunekar Vs. Gopi Mukund Naik, AIR 2003 BOMBAY 77**". The learned counsel submitted that in view of the aforesaid judgment, the Trial Court was not precluded from entertaining and allowing the subsequent application. The learned counsel in the circumstances, prayed for dismissal of the writ petition.

5. After having considered the submissions advanced by the learned counsel appearing for the respective parties and the material placed on record by them, the impugned order apparently appears unsustainable. In the application filed at Exhibit-243, similar grounds were raised and similar prayers were made; first that the properties of the judgment debtors be attached and the other that the judgment debtors be sent in prison. As noted here-in-above, the said application came to be rejected by the learned Civil Judge vide order dated 30.08.2017. About one month thereafter, on the same grounds the decree holders filed another application at Exhibit-286 with a same prayer that the defendants in the said darkhast proceedings (petitioners in the present petition) be sent in civil prison and the learned Civil Judge has allowed the said application. Whether such course was permissible, is the question to be decided. Relying on the judgment of this Court in the case of "Yashodabai Ganesh Naik Gaunekar" (cited supra), it is argued on behalf of the respondents that successive application under Order 21 Rule 32 was not barred whereas, the petitioners, relying on the judgment of the Karnataka High Court (cited supra) have contended that once earlier application was rejected, on the

same ground no other application could have been filed by respondents nor it could have been entertained by the Court.

6. Though it was sought to be contended by Shri Deshmukh that the prayers in both the applications were not similar, after having perused the contents of both the applications, it is apparently revealed that in both the applications, the prayer was to sent the judgment debtors in prison. Even, most of the contents in the application are the same. The application below Exhibit-243 was rejected by the Court on 30.08.2017 and the application at Exhibit-286 came to be filed on 28.09.2017. No new fact has been brought on record which had occurred in the period between 30.08.2017 to 28.09.2017, so as to provide any cause of action for the decree holders to file any other application claiming the same relief. In the circumstances, as held by the Hon'ble Karnataka High Court in the case of "Basavant Dundappa" (cited supra), the second application filed for the same reliefs would be barred by the principles of res-judicata.

7. The ratio laid down in the case of "Yashodabai Ganesh Naik Gaunekar" (cited supra), relied upon by the respondents, would not apply in the facts of the present

case. In the said matter, the decree for injunction was put in execution. In execution of the said decree, the judgment debtor though was detained in civil prison for breach of injunction, ventured to commit successive breaches along with his sons and in such circumstances, it was held by the learned Single Judge of this Court that successive breach of injunction by judgment debtor gives fresh cause of action for the detention of the judgment debtor and a person once detained can be again detained for the breach committed by him on second occasion. It is evident that the facts in the present case are quite distinguishable.

8. In the forgoing circumstances and for the reasons recorded here-in-above, the impugned order deserves to be set aside and is accordingly set aside. Consequently, the application below Exhibit-286 in Regular Darkhast No.309 of 2004 stands rejected. The writ petition thus stands allowed in the aforesaid terms.

9. It is clarified that the decree holders are not precluded from availing the appropriate remedies available in law for execution of the decree passed in their favour.

(P.R. BORA, J.)