

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7688 OF 2019

Shri Gunjan Mahendrakumar Shah ...Petitioner

Versus

Shri Bipinchandra Kamalashankar Desai ...Respondent

.....
Mr. S.P.Wani, Advocate for the Petitioner.
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CORAM : RAVINDRA V. GHUGE, J.

DATE : 08-07-2019.

PER COURT :

01. By this petition, the petitioner seeks to challenge the Order dated 14.2.2019 passed by the Executing Court by which. the application Exh. 23 filed by the decree holder in Special Darkhast No. 3/2017 is allowed and the non-agricultural plots No.1 and 2 in gut No. 313/2-B/1 situated at Nandurbar have been attached. The petitioner-Judgment debtor has already created third party interests.

02. The learned Advocate for the petitioner submits that the amount of Rs. 7,50,000/- is at issue. The petitioner has repaid the amount of Rs. 4,50,000/- and an

amount of about Rs. 3,00,000/- is yet to be paid. He concedes that the said amount is liable to be paid. But, the said amount is not recoverable in Special Darkhast No. 3/2017.

03. While dealing with this petition, I must be conscious of the fact that the darkhast proceeding is pending and all the contentions of the Judgment debtor would be considered by the Executing Court while passing final Orders. The impugned Order is an equitable Order and ensuring that the plots are not disposed off by the Judgment debtor or third party interests are not created which would frustrate the claims of the decree holder.

04. The legal issue as regards maintainability of the darkhast proceedings and whether the money can be recovered in such proceedings, are open in the Executing Court and an equitable Order would not necessarily be a perverse or erroneous Order.

05. In view of the above, this petition being devoid of merit is, therefore, dismissed.

[RAVINDRA V. GHUGE]

JUDGE

Dahibhate/-