

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5736 OF 2018

SWASTIK ENTERPRISES
VERSUS
AKASH CERAMICS PVT. LTD.

Advocate for Petitioner : Mr. S.S. Kulkarni
h/f. Mr. A.C. Tripathi.
Advocate for Respondent : Mr. R.M. Sharma.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 10th January, 2019

PER COURT :

1. The petitioner/decreed holder is aggrieved by the order dated 10/04/2018, passed by the executing Court below Exhibit 10 in Special Darkhast No. 41/2016. By the said order, the executing Court has recorded that since the properties of the judgment debtor are sought to be attached by filing application Exhibit 10, the execution proceeding will have to be transferred to the Court within whose jurisdiction the said immovable property are situated. It is not in dispute that the immovable properties of the judgment debtor are situated in Ahmedabad in the state of Gujarat.

2. I have heard the learned advocates for the

respective sides. Learned advocate for the respondent judgment debtor submits that after the execution proceedings are transferred to the competent Court at Ahmedabad, the execution proceedings can thereafter, proceed in accordance with law.

3. I find that the view taken by the trial Court is supported by the judgment of the Hon'ble Apex Court in the matter of **Salem Advocate Bar Association, Tamil Nadu Versus Union of India, [(2003) 1 SCC 49]**.

4. Learned advocate for the decree holder submits that the execution proceedings are posted on 05/02/2019, before the executing Court at Aurangabad. He would move an appropriate application under section 39 of the Code of Civil Procedure and would seek transfer of the proceedings to the competent Civil Court at Ahmedabad, Gujarat. The petitioner has voiced a serious grievance that though the judgment debtor has appeared in these proceedings, he is not initiating steps for satisfying the decree and is attempting to prolong the matter and evade execution.

5. Learned advocate for the respondent submits that the respondent is an Industry and would never indulge in any unfair activity.

6. In view of the above, this petition is disposed of with the following directions :

(a) Since the respondent judgment debtor has appeared in this proceedings, it shall appear before the executing Court in Special Darkhast No. 41/2016 at Aurangabad on 05/02/2019.

(b) Formal notice is not required to be issued by the learned 05th Joint Civil Judge, Senior Division, Aurangabad.

(c) If the petitioner prefers an application under Section 39 of the C.P.C. on 05/02/2019, for seeking transfer of proceedings, the said Court shall forthwith pass an order since the judgment debtor also agrees that the matter will have to be transferred to Ahmedabad. The Court would therefore transfer Special Darkhast No. 21/2016 to Civil Court at Ahmedabad.

(d) The judgment debtor as well as the decree holder would appear before the said

Civil Court at Ahmedabad on 15/03/2019 and no formal notices would be required to be issued by the said Court.

(e) If the decree holder chooses to remain absent on the said date, the executing Court would pass an appropriate order for attaching the properties of the judgment debtor and thereafter, adopt the due procedure of law to satisfy the decree.

(RAVINDRA V. GHUGE, J.)

S.P.C.