

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

WRIT PETITION NO. 6037 OF 2019

**REVNATH KISANRAO NANNAWARE
VERSUS
MORIS ALBERT DISOZA AND OTHERS**

...
Advocate for the Petitioner : Shri M. P. Kale
Advocate for Respondent No. 1 : Shri R. L. Kute

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 04th JUNE, 2019.

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PER COURT :

1. The petitioner is aggrieved by the impugned order dated 15/03/2019 passed by the executing Court, by which, application Exhibit 32 filed by the petitioner in Regular Darkhast No. 314/2014, has been rejected.

2. The contention of the petitioner is that the judgment and decree dated 24/11/2005 delivered by the First Appellate Court in Regular Civil Appeal No. 181/2001, is an exparte decree. It is further contended that the petitioner invoked Section 47 r/w Order XXI Rule 97 to 102 of the Code of Civil Procedure, in execution proceedings and prayed that the

application be allowed and it be declared that the judgment and decree is illegal, void ab-initio and a nullity. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of *Sameer Singh & Anr. Vs. Abdul Rab & Ors., 2015(1) ALL MR 450(S.C.)*.

3. It appears from the record that the petitioner is the L.R. of deceased Kisan and Thakubai. Thakubai is one of the two wives of deceased Kisan. Regular Civil Suit No. 914/1991 was dismissed by the judgment dated 17/02/2001. Kisan was the original defendant No.2, who died during the pendency of the suit. L.Rs. of Kisan namely Thakubai, Revannath (the petitioner herein), Laxmibai and Chandrakant were brought on record in the suit. The Record further reveals that the plaintiff preferred Regular Civil Appeal No. 181/2001 to which the petitioner and the L.Rs. of Kisan were parties. Despite the service of Court notice, the petitioner chose to remain absent and did not participate in the proceedings. By the judgment dated 24/11/2005, the appeal was decreed.

4. It is informed by the learned Advocate for the petitioner,

across the bar, that the petitioner preferred a Second Appeal before this Court for challenging the decree and the said Second Appeal has been dismissed on its merits. It is conceded that none of the judgment debtors approached the Honourable Apex Court and, therefore, the judgment and decree of the First Appellate Court attained finality.

5. In view of the above, Rule 97, 98, 100, 101 and 102 are not applicable. So also Rule 99 under Order XXI would not apply to the case of the petitioner since the petitioner is not 'a person other than the judgment debtor who was dispossessed of the immovable property by the decree holder'.

6. Considering the fact situation recorded as above, the judgment cited by the petitioner in the case of *Sameer Singh and Anr. (supra)*, would not apply since there is no contention that a fraud was played on the petitioner, *inasmuch* as, the decree was sustained upto this Court when the Second Appeal preferred by the petitioner was dismissed.

7. In this backdrop, the Trial Court, in my view has rightly

considered the law and rejected application Exhibit 32. The petitioner has been denied any relief directly by this Court in the second appeal. Attempt to derive some benefits indirectly with the aid of the Exhibit 32 application, cannot be permitted.

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

(RAVINDRA V. GHUGE, J.)

shp/-