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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10136 OF 2015

Shaikh Mukhtyar Shaikh Sattar & Others

PETITIONERS

VERSUS

Shripati Haribha Gawali and Others

RESPONDENTS

.....
Mr. Bhagwar R. Sable, Advocate for the petitioners
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 12th FEBRUARY, 2019

ORDER :

1. Heard learned advocate for the petitioners.
2. It transpires that petitioners had preferred a suit for specific performance against present respondents No. 1 and 2 and during pendency of the suit, respondents No.1 and 2 had alienated suit property to respondent No. 3. The suit was subsequently decreed. Respondent No. 3 had tried to question the decree by filing an appeal which had been belated and delay had not been condoned.
3. Subsequently, petitioner had filed Regular *Darkhast* for execution of decree and in the same respondent No.3 had applied for impleading her as party. Said application came to be

allowed under order dated 15th July, 2015 directing that respondent No. 3 be impleaded as Judgment Debtor No. 1 and / or 2.

4. Petitioner had preferred review application before the executing court, however, the same came to be rejected observing that approaches before the district court and the high court at the instance of respondent No. 3 were not in respect of addition of party. Those were for condonation of delay. Writ petition had been against refusal to condone the delay. The court appears to have considered that the review application does not fall in the categories as are referable to Order XLVII of the Civil Procedure Code.

5. Alienation of suit property in favour of respondent No.3 had been during pendency of the suit and the suit had been decreed and an attempt at her instance to question validity of decree which had been belated had been turned down by the district court and upheld by the high court in writ petition. In the circumstances, with such a position while application for impleading her in execution proceedings had been granted, yet as to how she can be Judgment Debtor No. 1 or for that matter Judgment Debtor No. 2 as observed under the original order

passed on the application by respondent No. 3 is not clear. As a matter of fact as *pendente lite* alienee, decree passed would be binding on her.

6. In the circumstances, though impleading is being challenged by way of writ petition, learned advocate for the petitioners resiles to the situation that since decree would be binding on respondent No. 3, she may be retained as party to the execution proceedings, however, she should be referred to as judgment debtor No. 3.

7. In view of the same, reasons for impleading respondent No. 3 as judgment debtor No1 and / or 2 may not be proper, however, since petitioners resile to the situation, impleading is retained, however, respondent No. 3 should be at No.3 in the execution proceedings. She has stepped into shoes of her vendors and bound by the decree.

8. Writ petition, as such, stands disposed of.

**[SUNIL P. DESHMUKH]
JUDGE**