

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

WRIT PETITION NO.12529 OF 2016

KISAN ABAJI BANSODE
VERSUS
PATHAN GAFOOR KHAN SAHEB KHAN

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Advocate for the Petitioner : Shri Shahane Pradeep L..

Advocate for the Respondent : Shri S.P.Tilve.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th February, 2019

Per Court:

1 I have heard the learned Advocates for the respective sides for quite sometime on 29.01.2019, 08.02.2019 and again today. I have perused the affidavit in reply filed by the Respondent (Pathan Gafoor Khan s/o Saheb Khan).

2 A peculiar situation has arisen before this Court. Admittedly, in the original proceedings before the Motor Accident Claims Tribunal, Pathan Gafoor Khan s/o Saheb Khan was the Respondent. Considering the journey of the litigation and the orders passed, this Pathan Gafoor Khan Saheb Khan is the Judgment Debtor.

3 The Respondent before this Court i.e. Pathan Gafoor Khan Saheb Khan claims to be the objection petitioner, who states that he is

commonly known as Gafoor Khan Saheb Khan Pathan. He contends that he is different than the Judgment Debtor (Gafoor Khan Saheb Khan Pathan).

4 There is no dispute that the decree has been put to execution before the Executing Court and the said decree has to be executed against the Judgment Debtor. The affidavit in reply filed by this Respondent begins with his name as "Gaffurkhan s/o Sahebkhani Pathan". His verification also indicates the same name. The Petitioner contends that the Respondent is the same Judgment Debtor.

5 As such, it is necessary for the Executing Court to identify the actual Judgment Debtor and the present Respondent in view of the contention of the Respondent that he carries the same name of the Judgment Debtor. Presently, the present Respondent, who is the objection petitioner, is residing at the address mentioned at Aurangabad and he contends that the actual Judgment Debtor is also a resident of Aurangabad.

6 In this peculiar situation, the Executing Court will have to initiate necessary steps to identify the actual Judgment Debtor since it would be a travesty of law and a miscarriage of justice if the actual Judgment Debtor escapes the clutches of law and the person, who claims to carry the same name, is divested of his property in the execution proceedings.

7 In view of the above, this Writ Petition is disposed of with a direction to the Executing Court to direct the Judgment Debtor as well as the objection petitioner to remain personally present in it's court on a particular date with valid/ statutory identification documents. The Executing Court would then conduct the process of identification of the actual Judgment Debtor.

8 If it is revealed that the objection petitioner has played a fraud on the court by posing himself to be a different person carrying the same name, the Executing Court would proceed with the execution as against the properties of the said objection petitioner and would also initiate appropriate steps for dealing with the act of fraud played on the court, as is permissible in law.

9 The record and proceedings be returned forthwith.