

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1923 OF 2019

AYG Edifices Pvt. Ltd.

.. Petitioner

vs.

Shantaram S. Velhal

(deleted since deceased

1(a) Vijay S. Velhal and ors.)and ors. .. Respondents

Ms Juliee Ghadge a/w. Mr. Sanjeev Sawant I/b Himanshu
Kode for the Petitioner.

Mr. Shilpan Gaonkar a/w. Ms Swati Sawant, Ms Gauri Joshi
I/b S.K. Legal Associate LLP for Respondent Nos.5 and 10.

CORAM : M. S. SONAK, J.

DATE : 25 MARCH 2019.

P.C. :-

1] Not on board. Upon mentioning, taken on production
board.

2] Heard learned counsel for the parties.

3] The challenge in this petition is to the order dated 26th
September 2017 at Exhibit-B (page 32).

4] Ms Juliee Ghadge and Mr. Sawant, learned counsel for
the petitioner, point out that in this case Suit No. 8142 of
1988 had already been decreed and the matter was pending
in execution. However, by the impugned order, learned
executing Court, has purported to dismiss the suit for
default. Ms Ghadge, learned counsel for the petitioner, points

out that this is a case of an error apparent on the face of record.

5] Mr. Gaonkar, learned counsel respondent Nos.5 and 10, admits that the reference to dismissal of the suit may be an error but from the context, it is quite clear that what was dismissed was the execution application.

6] From the perusal of the impugned order, though, there is reference to the suit being dismissed for default, it is quite clear that what is dismissed is the execution proceedings. Once this position is clarified, it will be open to the parties who are affected by dismissal of the execution proceedings to take out appropriate proceedings seeking restoration by making out a case for sufficient cause.

7] With clarification and liberty as aforesaid, this petition is disposed of. It is made clear that this Court has not adverted to the merits of the rival contentions, if any, therefore, all contentions of all parties are kept open.

(M. S. SONAK, J.)