

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1253/2017

Anandrao S/o Namdeorao Rohad
Aged about 69 years, Occupation : Cultivation,
R/o Taroli, Tq. Kuhi, Distt.Nagpur.

.... **PETITIONER**

// **VERSUS** //

- 1] Smt. Dhurpatibai Wd/o Sadashio Bhojankar
Aged about 72 Yrs, Occ.- Household
R/o Taroli, Tq.Kuhi, Distt.Nagpur.
(Deleted as per Court's Order dated 13.10.2012)
- 2) Nathu S/o Sadashio Bhojankar
Aged about 52 Yrs, Occ.- Teacher,
R/o 94, Jai Durga Layout, Gayatri Nagar, Zingabai Takli,
Nagpur.
- 3) Smti Sitrukabai W/o Fatthuji Kshirsagar
Aged about 62 Yrs, Occ.- House Hold,
R/o Mouza -Chanda, Tq.Kuhi, Distt. Nagpur
- 4) Smt. Shantabai W/o Raibhanji Shende,
Aged about 67 Yrs, Occ.- House Hold,
R/o Ratoli, Tq.Kuhi,
Distt. Nagpur
- 5) Mrs.Kantabai W/o Not known Rode,
Aged about 52 Yrs., Occ.-Household,
R/o 294, Dharam Nagar, Kalamna Market,
Nagpur.

.... **RESPONDENTS**

Ms Meena Hiwase, Adv. for the petitioner
None for the respondents.

CORAM : Z.A.HAQ, J.

DATED : 15th July, 2019

ORAL JUDGMENT :

None appears for the respondent Nos. 2 to 5, though served.

2] Heard Ms. Hiwase, advocate for petitioner.

3] **RULE.** Rule made returnable forthwith.

4] In the execution proceedings the petitioner (judgment debtor) had filed an application praying that witness summons be issued to the Secretary of Gram Panchayat whose evidence, according to the judgment debtor, was necessary to consider the objection raised by the judgment debtor to the maintainability of the execution proceedings. The Executing Court granted the prayer made by the judgment debtor and directed issuance of witness summons to the Secretary of Gram Panchayat. On the scheduled date, the Secretary of Gram Panchayat was present, however, the advocate representing the judgment debtor was not able to attend the proceedings and hence, application seeking adjournment was filed. The Executing Court rejected this application and directed to proceed further.

On the next date, the judgment debtor filed an application

praying that the order passed earlier i.e. on 07.12.2016 be recalled and the judgment debtor be permitted to examine the Secretary of Gram Panchayat. This application is rejected by the impugned order.

5] After considering the facts of the case and going through the impugned order, I find that the Executing Court has not committed any illegality or error of jurisdiction. However, as the Executing Court earlier held that an opportunity should be given to the judgment debtor to examine the Secretary of Gram Panchayat and directed issuance of witness summons, in my view, interests of justice would be served by passing the following order :

- a) The impugned order is set aside.
- b) The judgment-debtor is permitted to examine the Secretary of Gram Panchayat, but on condition that the judgment debtor shall ensure the presence of the Secretary of Gram Panchayat before the Court and examine him within two months from today. If, the petitioner-judgment debtor fails to take appropriate steps to ensure the presence of Secretary of Gram Panchayat before the Court and to examine him within two months from today, the petitioner-judgment debtor would lose the opportunity and Executing Court shall proceed further with the execution proceedings.

c) The petitioner-judgment debtor shall pay costs of Rs. Ten Thousand to the respondent Nos. 2 to 5. The amount of costs would be deposited before the Executing Court within one month. On deposit of the amount, the same shall be given by the Executing Court to respondent the Nos. 2 to 5.

d) The petitioner shall produce the copy of this judgment on record of the Executing Court within one month and also shall serve the copy of judgment on the respondent Nos. 2 to 5 or the advocate representing them before the Executing Court, within one month.

e) Rule is made absolute in the above terms.

JUDGE

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