

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

M.C.A. (Review) No.499 of 2019
in
Writ Petition No.6979/2018 (D)
(Trimbak Yadavrao Khaty .vs. Ashok Wasudeo Vensiyani and
another)

with

M.C.A. (Review) No.500 of 2019
in
Writ Petition No.6967/2018 (D)
(Trimbak Yadavrao Khaty .vs. Smt. Vishambahari w/o Daulatram
Kamwani and others)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders.
 and Registrar's orders

Mr. B.N. Mohta, Advocate for Applicant.
 Mr. S.S. Sitani, Advocate for Non-applicant No.1 in MCA
 No.499/2019 and for Non-applicant Nos.1 to 3 in MCA No.
 500/2019.
 Mr. A.S. Mehadia, Advocate for Non-applicant No.2 in MCA
 No.499/19 and for Non-applicant No.4 in MCA No. 500/2019.

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CORAM : Manish Pitale, J.
RESERVED ON : July 8, 2019.
PRONOUNCED ON : August 28, 2019

By these review applications, the applicant (original respondent no.2 in the writ petitions) has claimed that there has been an error apparent on the face of the record in the common judgment and order dated 10.04.2019 passed by this Court in Writ Petition Nos. 6967 of 2018 and 6979 of 2018.

2. On 02.05.2019, this Court had issued notice and granted stay to further proceedings in the execution applications filed by the non-applicant no.1 (original writ petitioner). The order dated 02.05.2019 reads as

follows:-

“ Heard Mr. B.N. Mohta, learned counsel for the applicant. It is specifically contended that while the Executing Court was yet to decide the objection raised by the applicant and the impugned order before this Court had only directed the parties to lead evidence in support of their respective cases, further directing that the execution would remain stayed during pendency of determination of objection, by common judgment and order passed by this Court, the objection raised by the applicant itself has been decided.

2. Issue notice returnable on 10th June, 2019.

3. In the meanwhile, there shall be stay of further proceeding in Special Darkhast Nos. 94/2016 and 100/2016.”

3. As noted in the said order, the principal contention raised on behalf of the applicant is that this Court committed an error in dismissing the objections raised by the applicant in the execution proceedings when the impugned order that was made subject matter of challenge in the writ petitions had only permitted the parties to lead evidence in respect of their contentions for adjudication of the objection raised by the applicant herein and during the pendency of determination of such objection, the execution was directed to be stayed. A reference has been made to the prayer clause in writ petitions, to emphasize that there was in fact no challenge raised in writ petition on the merits of the objection and that the only order dated 05.09.2018 of the Executing Court was challenged wherein the

aforesaid directions had been passed.

4. In support of the contention of the applicant that this Court could not have dealt with and dismissed the objection itself on merits, reliance was placed on order dated 27.11.2018 passed by this Court in a review application filed in Writ Petition No. 2027 of 2018 (George Kochaveedu Varghese .vs. Kailashchandra Kedarnath Agrawal and another). It was pointed out that in similar circumstances on noticing the error, this Court had allowed the review application. Reliance was also placed by the learned counsel for the applicant on other such judgments.

5. The operative part of the order dated 05.09.2018 passed by the Executing Court, which was subject matter of challenge before this Court in writ petitions, reads as follows:-

“1. The parties to lead evidence if any in support of their respective case for adjudication of the objection at Exh.46.

2. During the pendency of the said objection for determination, the execution would remain stayed.”

6. The said order was passed on Exhs. 46 and 48. A perusal of the said order does show that the objection to execution of the decree raised by the applicant was to be determined and that there was only a direction granted for the parties to lead evidence and during pendency of the objection, the execution was directed to be stayed. In the writ petitions, the prayer was only for quashing and setting aside of the said impugned order dated 05.09.2018 passed by the

Executing Court.

7. Thus, the contention raised on behalf of the applicant is correct to the extent that the objection raised by the applicant was still pending before the Executing Court and that this Court, while deciding the aforesaid writ petitions, went ahead to dismiss the objection itself. To that extent, there is an error apparent on the face of the record in the judgment and order dated 10.04.2019 passed by this Court in the aforesaid writ petitions.

8. But, at the same time, the discussion in the said judgment does show that in the facts of the present case, the prayer made on behalf of the applicant before the Executing Court for leading evidence in support of the objection was not required to be granted. Considering the chequered history of the litigation noted in the said judgment passed by this Court, demonstrating the manner in which execution of the decree was being avoided by the judgment debtor by himself and by setting up other parties, stay to the execution proceedings during the pendency of the said objection raised by the applicant was certainly not justified.

9. Therefore, while the operative portion and some part of the judgment and order dated 10.04.2019 passed by this Court in the said writ petitions deserve to be reviewed and recalled, the other part of the said judgment deserves to be retained.

10. Accordingly, the review applications are partly allowed and paragraphs 19 to 23 of the said judgment and order dated 10.04.2019 passed in the aforesaid writ

petitions are recalled, while paragraphs 1 to 18 are retained.

11. As a result, the said common judgment and order dated 10.04.2019 passed by this Court in the aforesaid writ petitions beyond paragraph 18 shall read as follows:-

“19. In view of the above facts noted by this Court and the position of law enunciated by the Hon'ble Supreme Court, it becomes evident that considering the nature of objection raised by respondent no.2 in the writ petitions, since as per his own contentions he can claim only a minuscule share in the suit property, his claim of a right to lead evidence in support of his objection cannot be accepted. The Executing Court clearly erred in granting an opportunity to the respondent no.2 (objector) to lead evidence in support of his objection and in view of the observations made by this Court that the decree is being stalled by one way or the other, the Executing Court clearly erred in granting stay of execution till determination of the objection.

20. Therefore, it would be in the interest of justice that the impugned order dated 05.09.2018 passed by the Executing Court is quashed and set

aside and the Executing Court is directed to decide the objection raised by the respondent no.2 without any necessity of leading evidence and on the basis of material available on record at the earliest. The Executing Court shall decide the objection expeditiously on merits and in accordance with law, preferably within a period of six weeks from today.

21. Rule made absolute in both writ petitions in above terms with no order as to costs."

12. The review applications are disposed of accordingly.

JUDGE

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