

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 5054 OF 2003

Laxman S/o Vithal Jadhav,
Age : 60 years, Occu : Pensioner,
R/o. : Sillekhan, Aurangabad.

... Petitioner
(Ori. Decree Holder)

Versus

1. Sayed Ahmed Ali S/o Sayed Abdul,
Age : 70 years, Occu : Business,
R/o. : Sillekhan, Aurangabad.
2. Sayed Ali S/o Sayed Ahmed,
Age : 45 years, Occu : Not known,
R/o. : As above.
3. Sayed Manna S/o Sayed Ahmed,
Age : 45 years, Occu : Not known,
R/o. : As above.
4. Saheba S/o Ahmed Ali,
Age : 40 years, Occu : Not known,
R/o. : As above.
5. Shaukat Ali S/o Ahmed Ali,
Age : 37 years, Occu : Not known,
R/o. : As above.
6. Rukhminibai W/o Ramdas Bhalerao,
Age : 57 years, Occu : Business,
R/o. : Sillekhan, Aurangabad
(R.No.6 deleted as per Court's order
dated 09.02.2004)

... Respondents
(Ori. J.D./Respdts)

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Advocate for Petitioner : Mr. P. N. Sonpethkar
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CORAM : V. K. JADHAV, J.
DATED : 04th FEBRUARY, 2020

JUDGMENT :-

1. Heard learned counsel for the petitioner. None present for the respondents.

2. The petitioner is the decree holder. Respondent no.3/judgment debtor no. 3 Sayed Manna @ Sayed Maqsood s/o Sayed Ahmed has filed application Exhibit 34 under Order XXI r/w Section 47 of C.P.C. in Regular Darkhast No. 89 of 1998 stating therein that the decree is not executable. Learned Judge of the executing court, by order dated 21.04.2003 rejected the said application.

3. It further appears that judgment debtor no. 3 has thereafter filed an application below Exhibit 37 for allowing him to lead evidence in support of the application Exhibit 34. Though by the aforesaid order, the executing court has rejected the application 34, surprisingly, the executing court has allowed the application Exhibit 37. The petitioner/decrece holder has therefore filed an application Exhibit 38 for rejection of the application Exhibit 37. However, the learned Judge of the executing court, by order dated

25.09.2003, rejected the said application Exhibit 38 with the observations that the order passed below Exhibit 37 is an independent order permitting judgment debtor no. 3 to lead evidence. It appears that even judgment debtor no.3 has also filed an application for review of the order passed below Exhibit 34. Learned Judge of the executing court, while disposing off the application Exhibit 41 and Exhibit 38, observed that one opportunity is necessary to be given to judgment debtor no.3 to substantiate his contention.

4. Meanwhile, one Bilquees Begum also filed an application under Order XXI Rule 97 of C.P.C. and though it was filed in the same execution proceeding, it came to be separately numbered as M.A.R.J.I. No. 896 of 2002. She had also filed an application for staying the decree. However, the executing court has rejected it and therefore the said Bilquees Begum has approached this Court by filing Writ Petition No. 1182 of 2003. By order dated 25.04.2003, this Court (Coram : A. P. Deshpande, J.), though dismissed the Writ Petition, directed the trial court to hear and decide the objection moved by the petitioner Bilquees Begum under Order XXI Rule 97 read with Section 47 of C.P.C..

5. Learned counsel for the petitioner/decreed holder submits that in terms of the judgment and decree passed in the year 1994 for recovery of possession, the petitioner/decreed holder is yet to recover possession of the suit property. Learned Judge of the executing court has passed various irrelevant orders and as such, the execution petition is still pending before the court without there being any progress. Learned counsel submits that let the orders passed by the executing court be there as it is, but the executing court shall dispose off the execution petition in terms of the decree passed way back in the year 1994 and in terms of the order passed below Exhibit 37 read with the order passed below Exhibit 1 and rest of the orders i.e. the orders passed below Exhibits 38 and 41 are liable to be quashed and set aside.

6. In terms of the order passed below Exhibit 37, learned Judge of the executing court has referred the objection raised by judgment debtor no.3 to the extent that the decree is not executable one and in reference to the same, observed that it is necessary to decide the present position of the suit property for execution of Darkhast. In terms of the said observation, the

executing court has further directed both the parties to produce documentary evidence for corroborating their contentions immediately. However, in terms of the orders passed below Exhibits 38 and 41 respectively, the executing court has unnecessarily extended the scope of the earlier order passed below Exhibit 37 and permitted the judgment debtor no.3 to lead oral evidence. The same appears to be contrary to the earlier order passed below 37. In view of the same, the executing court shall proceed with the execution petition in terms of the order passed below Exhibit 37 r/w Exhibit 1 and so also consider the objections raised by the said Bilquees Begum vide M.A.R.J.I. No. 896 of 2002. Hence, I proceed to pass the following order :

ORDER

- I. The Writ Petition is hereby partly allowed.
- II. The impugned order passed below Exhibits 38 and 41 are hereby quashed and set aside.
- III. The executing court shall proceed with the execution petition in terms of the order passed below Exhibit 37 and the order passed below Exhibit 1 in Regular Darkhast No. 89 of 1998 alongwith the

objections raised by Bilquees Begum vide M.A.R.J.I. No. 896 of 2002.

IV. The executing court shall dispose off pending Regular Darkhast No. 89 of 1998 as expeditiously as possible, preferably within a period of six months.

V. The Writ Petition is accordingly disposed off. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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