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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 266 OF 2020
WITH
CIVIL APPLICATION NO. 856 OF 2019**

Narayan Maruti PawarAppellant
V/s.
Sahebrao Bajapa PisalRespondent

Mr. Dilip Bodake for the appellant
Mr. E. A. Sasi for respondent

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 18, 2020.

P.C.

Question of law which is sought to be agitated in this Second Appeal by the Judgment Debtor is:

Whether the Judgment impugned rejecting an objection preferred under Section 47 of Code of Civil Procedure, 1908 is sustainable in law?

2] This Appeal is by Judgment Debtor who suffered a money decree for an amount of Rs. 1,47,500/- as R.C.S. No. 217 of 2002 to that effect came to be decreed.

3] Regular Appeal being 378 of 2008 by the appellant Judgment Debtor also came to be dismissed which was further confirmed in Second Appeal before this Court.

4] Based on money decree, execution proceedings were initiated being Regular Darkhast No. 21 of 2012.

5] In the said Darkhast, appellant Judgment Debtor raised an objection that decree passed is based on a chit which was not properly proved. Said objection came to be rejected as not sustainable and maintainable vide Judgment dated 04/12/2018.

6] The submissions are, executing Court should have tried the objection in the form of Civil Suit and should have dealt with the same by framing appropriate issue.

7] In my opinion, no question of law is involved in the Second Appeal, particularly when the issue raised in objection preferred under Section 47 of the Code has been already adjudicated into by the

Trial Court and same was confirmed upto this Court in an earlier round of litigation in a Second Appeal.

8] Appeal as such, lacks merit, stands dismissed.

9] As far as the rejection of objection of present Second Appeal is concerned, same will not cause any prejudice to the defence to be raised by the appellant in R.C.S. No. 136 of 2000.

10] Needless to clarify that Decree holder will be entitled to withdraw the amount deposited by the appellant-Judgment Debtor in this Court. Said amount be adjusted against the amount receivable by the Decree Holder in execution proceedings.

11] In view of dismissal of Second Appeal, Civil Application also stands disposed of.

[NITIN W. SAMBRE, J.]