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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.494 OF 2020

Dinkar s/o Anant Adawadkar

PETITIONER

VERSUS

Shri Swami Samarth Co-op Housing Society
Deopur, Dhule and Others

RESPONDENTS

.....

Mr. Apparao Yenegure, Advocate for the petitioner

Mr. A. V. Hon, Advocate for respondents No. 3, 4 and 5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th DECEMBER, 2021

ORDER :

1. This petition is directed against the orders passed by District Judge-4, Dhule below Exhibits-28 and 41 in Regular Civil Appeal No. 125 of 2018.
2. Application Exhibit-28 was filed on behalf of the original appellant No.1 (present respondent No.1) seeking stay to the execution proceedings bearing Special Darkhast No. 70 of 2008, which was filed on the basis of judgment and decree passed in Special Civil Suit No. 53 of 2003.
3. Present petitioner (respondent No.2 in the appeal) appeared in the appeal on 15th October, 2018 and sought adjournment for filing say to the said application Exhibit-28.

Immediately on the next day i.e. on 16th October, 2018, the respondent (present petitioner) insisted in the office of the District Superintendent of Land Records, Dhule for execution of the judgment and decree in Special Civil Suit No. 53 of 2003, which was subject matter of the appeal. Along with the application (Exhibit-28), documents were filed along with list (Exhibit-30) showing the efforts on the part of the petitioner to get the decree executed.

4. During pendency of the said application, while the appeal was listed on board, on 20th November, 2018, the petitioner submitted *purshis* Exhibit-31 informing the appellate court that he has filed transfer application to the Principal District Judge.

5. The first appellate court came to the conclusion that from the documents attached with the list Exhibit-30, it can be inferred that the petitioner is trying to execute the judgment and decree passed in Special Civil Suit No. 53 of 2003, by moving the concerned authorities. It is observed that the first appeal can be said to be the continuation of the suit and if the judgment and decree, impugned in the appeal, is executed, nothing will remain in the appeal. It is further held that since transfer application is moved to the Principal District Judge, it will take some time to decide said transfer application. The appellate

court, in order to protect interest of both the parties, was pleased to allow the application Exhibit-28, by directing the appellants and the respondents in the appeal, to maintain the position of the suit property, as it is in all respects, which was in existence prior to the passing of the judgment and decree in Special Civil Suit No. 53 of 2003 dated 1st August, 2018, till final disposal of the transfer application filed by respondent No. 2 in the appeal.

6. The transfer application, filed by respondent No. 2 in the appeal, came to be rejected by the learned Principal District Judge, by order dated 12th March, 2019. After rejection of the said application, application Exhibit-41 for extension of *status quo* order passed below Exhibit-28 was filed by the appellant (present respondent No.1), which was allowed by the first appellate court. The petitioner is aggrieved by these orders.

7. Respondents No. 1 to 3 and 5 to 9 have filed affidavit in reply to the petition and have placed on record a joint *purshis* (Exhibit-50) submitted by the appellant and the respondents in the appeal, wherein it is stated that respondent No. 2 (present petitioner) has not filed any application in respect of suit property after 22nd November, 2018 and he will not transfer the suit property. This *purshis* is signed only by respondent No.2

(present petitioner) and his advocate and the same is not signed by the appellant (respondent No.1) or his advocate. A joint *purshis* (Exhibit-51) filed on behalf of the appellant and respondents No. 2 to 6 in the appeal is also placed on record, wherein it is stated that the parties shall maintain the position of the suit property prior to the date of passing of the judgment and decree in Special Civil Suit No. 53 of 2003 and till the decision of the appeal No. 125 of 2018, they will not proceed in any court or government office for execution of the decree passed in Special Civil Suit No. 53 of 2003. Respondent No.2 (present petitioner), so also his advocate have signed this *purshis*.

8. In view of the aforestated circumstances, this court is of the considered view that the first appellate court has rightly exercised its discretion and has passed reasoned orders while allowing the applications Exhibits-28 and 41. No illegality or perversity is found in the orders impugned in the present writ petition. There is no substance in the writ petition. Writ petition is, therefore, dismissed with no order as to costs. In the facts and circumstances of the present case, hearing of application Exhibit-6 is expedited.

[NITIN B. SURYAWANSHI]
JUDGE