

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7153 OF 2016

Dnyaneshwar Trust
Dnyaneshwar Nagar,Bhende(Bk)
Tq.Newasa,Dist.Ahmednagar
Through its authorized officer,
Shri Chandrakant s/o Haribhau Khade
Age:54 years, Occ:Service

..PETITIONER
[Orig.Decree holder]

VERSUS

The Managing Director,
Arjun Sugar Industries Pvt.Ltd.,
Gut No.93, Sawargaon Hadap,
Jalna Mantha Road,Jalna
Tq. Dist.Jalna

..RESPONDENT
[Orig.judgment debtor No.2]

.....

Advocate Shri H.D.Deshmukh for petitioner.
Advocate Shri P.A.Bhosale holding for Shri A.P.Munde
Advocate for respondent.

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**CORAM: MANGESH S PATIL,J.
DATE : 07.09.2021**

ORAL JUDGMENT:

Heard. Rule. The Rule is made returnable forthwith. At the request of the parties, the matter is heard finally at the stage of admission.

2] The petitioner is the Decree Holder. Finding that the vehicle that was attached and sought to be realized is actually in possession of the respondent that it filed Application (Exh.43) purportedly under Order XXI Rule 46-D and 46-E of the Code of Civil Procedure to implead the respondent as Judgment Debtor No.2 in the execution proceeding. By the impugned order the learned Judge of the executing Court rejected the application. Hence this Petition.

3] The learned advocate for the petitioner would submit that in order to defeat rightful claim of the petitioner, the vehicle bearing No.MH-21-A-8378 that has been attached in the execution proceeding is not being allowed to be taken away even though it was found in the respondent's premises. According to the learned advocate, when the executing Court tried to realize and attach, the respondent created obstruction. It is further mentioned by the bailiff in the panchanama which was being prepared on the spot he was told by the officers of the respondent that even that vehicle was purchased under the sale certificate issued under the Securitization Act. The learned advocate would therefore submit that in order to settle the dispute an innocuous prayer to add the respondent as a Judgement Debtor no.2 was sought but has been refused.

4] The learned advocate for the respondent referring to the affidavit in reply would submit that the properties, moveable

and immovable of the Judgement Debtor were sold in auction and the respondent's predecessor had purchased it and certificates were also issued. However, he fairly concedes that the sale certificate of the moveable properties though describes other vehicles does not refer to the vehicle No.MH-21-A-8378.

5] If such is the state of affairs, the vehicle which has been attached in the execution of the decree, the Decree Holder is entitled to follow the vehicle wherever it lies and it is for the executing Court to see to it that the vehicle is taken possession of and if necessary to sell it to realize the decretal amount.

6] In my considered view there is no reason or propriety to add the respondent-Judgment Debtor No.2 in the execution proceeding.

7] In view of such state of affairs, the Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL,J.]

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