

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10766 OF 2021

Sushil s/o Shirish Ostwal,
Age : 40 years, Occu. Business
R/o Near State Bank, Savedi,
Ahmednagar

PETITIONER

VERSUS

Lachmandas s/o Bansilal Rathod
(Died through L.Rs. 2 to 4)
Shivshankar s/o Lachmandas Rathod
and others

RESPONDENTS

Mr. Amol S. Gandhi, Advocate for the petitioner

CORAM : MANGESH S. PATIL, J.

DATE : 11.10.2021

PER COURT :

Heard Mr. A.S. Gandhi, learned Advocate for the petitioner.
Perused the record.

2. It transpires that the petitioner was intending to oppose the execution proceeding in Regular Darkhast No.216/1982 that was pending in the court at Ahmednagar. He was not a party to that execution proceeding but had sought to intervene and had filed an application under Order XXI Rule 97 of the Code of Civil Procedure. It was rejected. He then preferred Writ Petition No.111/2019. While disposing of the said writ

petition, by the judgment and order dated 04.01.2019, this Court granted him liberty to prosecute his remedies before the Appellate Court. The order would show that to demonstrate that he was acting bonafide, he was directed to deposit a sum of Rs.10,00,000/- in the executing court within a week and subject to such deposit, the order passed in the execution proceeding on the application (Exh-444) was kept in abeyance for a period of three weeks. Pursuant thereto, the petitioner deposited the amount, which is still lying in the executing court. By the impugned order, his request for refund of the amount is rejected on the sole ground that the deposit was made pursuant to the order of this Court and there was no subsequent order permitting him to withdraw it.

3. It also transpires that the execution proceeding is finally disposed of as fully satisfied by the order dated 16.04.2019 (Exh-D to the petition).

4. In view of such events, I find no impediment in directing the executing court to refund the money to the petitioner. The Writ Petition is allowed in terms of prayer clause (B).

[MANGESH S. PATIL]
JUDGE