

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

WRIT PETITION NO.6677 OF 2019

Shri. Sumeet Ganpat Bachewar Petitioner

Vs.

Shri. Ramesh Vallabh Patel & Ors. Respondents

Mr. R.M. Hardas i/by Ajay S. Patil for Petitioner

Mr. Akhil Kupade i/by Manoj Harit & Co. for Respondent No. 2.

Smt. V.S. Nimbalkar, AGP for Respondent No. 5- State.

Coram : NITIN W. SAMBRE, J.

Date : 10TH FEBRUARY, 2021

P.C.:

1. In Special Darkhast No. 85 of 2008, the Petitioner came to be summoned as the witness at the behest of objector. There is suit pending in between the Petitioner and objector in relation to very same suit property, which is subject matter of decree under execution.

2. In the aforesaid background, the Petitioner moved an application Exhibit 154 for recalling of witness summons, which is rejected by the order impugned dated 14th March, 2019 by the Civil Judge, Senior Division, Panvel. As such, this petition.

3. The fact remains that the suit initiated by the Petitioner the objector is sought to be impleaded as party, which is pending adjudication. Admittedly both these suits including execution proceeding are in relation to one and the same property.

4. As far as the decree under execution in Special Darkhast is concerned, admittedly the Petitioner is not the party to the said decree.

5. The claim in the suit preferred by the Petitioner as against the authority or in case if the Respondent- Objector is permitted to be impleaded, it will be proved on the basis of the evidence to be adduced in the said suit.

6. In the aforesaid backdrop, the fact that the Petitioner will be required to disclose his evidence/open his cards in an execution proceedings that too at the behest of the objector is not recognised in law.

7. If the Petitioner forced to depose in the execution proceedings, the same might result in spoiling his own case. As such,

in my opinion, the Court below has committed an error summoning the Petitioner at the behest of Objector in Darkhast proceedings.

8. Learned counsel for the Petitioner has rightly invited my attention to the judgment of this Court in the matter of Pirgonda Hongonda Vs. Vishwanath Ganesh and Ors., reported in 1956 A.I.R. (Bombay) page 251., wherein the party who has already taken a stand cannot be forced to depose to the inconsistency of such stand.

9. In that view of the matter, the Writ Petition is allowed.

10. The order impugned dated 14th March, 2019 passed by Civil Judge, Senior Division, Panvel below Exhibit 154 in Special Darkhast No. 85 of 2008 is hereby quashed and set aside.

11. Application Exhibit 154 stands allowed.

(NITIN W. SAMBRE, J.)