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

WRIT PETITION NO. 515 OF 2020

Sohan Manohar Sontakke and Ors

....Petitioners

V/s.

Sachin Padmakar Sontakke

.....Respondent

Mr. Chetan G. Patil a/w Mandar Bagkar for the Petitioners

Mr. Sandeep S. Koregave for Respondent

CORAM : NTIN W. SAMBRE, J.

DATE: FEBRUARY 15, 2021.

P.C.:

1] This Petition is by Judgment-Debtor in Special Civil Suit No. 75 of 2001 who have suffered a Decree for specific performance on 16/12/2008.

2] Respondent no. 1 Decree-holder initiated execution proceedings based on the Decree for specific performance passed by Jt. Civil Judge Senior Division, Kolhapur in the Court of Jt. Civil Judge Junior Division, Panhala through Special Darkhast No. 15 of 2009. In the said execution proceedings, Decree-holder sought extension of time to deposit amount of consideration as was directed

under the Decree thereby condoning the delay.

3] Application Exhibit 47 & 48 to that effect came to be filed (closed) without any execution by Civil Judge Junior Division, Panhala vide Order dated 09/08/2012.

4] In the aforesaid background, Decree-holder took out execution proceedings Darkhast No. 734 of 2012 in the Court of Civil Judge Senior Division, Kolhapur.

5] Petitioner hereto filed their objection to the same. Petitioner thereafter moved an Application under Section 39 (4) of the CPC thereby raising an objection to the jurisdiction of the Court of Civil Judge Senior Division, Kolhapur as said Court lacks jurisdiction to execute the Decree as the property is situated outside the legal limits of its jurisdiction i.e. Panhala.

6] Vide Order impugned dated 07/02/2019, Court of 4th Jt. Civil Judge Senior Division, Kolhapur rejected the said objection passed

below Exh. 39. As such, this Petition.

7] Submissions of learned counsel for the Petitioner are, though the Decree for specific performance was passed by Court of Civil Judge Senior Division Kolhapur, the Suit property is situated within the jurisdiction of the Court at Panhala which comes under the Judicial district of Kolhapur. That being so, execution proceedings are maintainable at Panhala and not at Kolhapur. Learned counsel so as to substantiate his claim has drawn support from the object of bringing Sub-Section 4 of Section 39 of the Code of Civil Procedure, 1908 by way of amendment of 2002.

8] Counsel for the Respondent Decree-holder would support order impugned as according to him, there is no illegality.

9] It is not in dispute that the Decree in execution was passed by Court of Civil Judge Senior Division, Kolhapur even though property is situated at Panhala. It is required to be noted that initially execution proceedings were preferred before Panhala Court i.e. Civil Judge Junior Division, Panhala to which Petitioner Judgment-debtor

has raised an objection as to its maintainability. Apart from above, Petitioner was seeking extension of time to deposit the amount as was directed under the Decree. Said extension can be granted by the Court who has passed the Decree.

10] As such, Respondent was justified in approaching the Court who has passed the Decree for its execution having regard to provisions of Section 37 (explanation) and Section 38 of the CPC. Court of Civil Judge Senior Division at Kolhapur will not cease to have jurisdiction to execute the Decree merely on the ground that the jurisdiction to try the Suit has been transferred to other Court. Of Course the Court which passes the Decree has every power and authority to execute the same as is provided under Section 38 of the CPC.

11] In that view of the matter, no error of law could be noticed in the order impugned. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]