

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3243 OF 2019

Sheikh Dastagir Sheikh Bannu and others

Vs.

Bismilla Khan Mehmood Khan Pathan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. K. P Sadavarte, Advocate for petitioners.
Mr. Tejas Deshpande, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/11/2021

Heard Mr. Sadavarte, learned counsel for the
petitioners and Mr. Deshpande, learned counsel for the
respondent.

2. The petition challenges the order dated 10.4.2019 passed by the learned Executing Court rejecting the objection raised by the petitioner/ judgment debtor by virtue of the application Exhs.58 and 82.

3. The application Exh.58 is filed on the ground that the compromise decree dated 19.06.2009 is non-est as it contains a clause that in view of the compromise arrived at between the parties, to get the property in question jointly measured, the decree holder shall not be entitled to execute the decree dated 24.02.2009 passed in R.C.S. No.98 of 2005. It is an admitted position that the compromise is arrived at during the pendency of the appeal R.C.A. No.25 of 2009. That being the position,

clause contained in the compromise before the Appellate Court of the above nature, cannot make the compromise non-est or non executable. Application Exh.58 has therefore, rightly been rejected.

4. The application at Exh.82, is based upon a contention that there was a fraud played upon the judgment debtor in the matter of compromise as arrived at and recorded in R.C.A. No.25 of 2009, and therefore, the decree could not be executed. It is material to note that a plea in this regard has been raised by the Judgment debtor, in R.C.S. No.208 of 2018, which is pending before the Civil Judge Senior Division, Buldana, in which the compromise decree has been challenged on the above ground. An application seeking a relief of directing the parties to maintain *status quo* vis-a-vis the execution filed therein at Exh.21 has been rejected by the said Court on 08.04.2019. No further proceedings have been filed to challenge the said order. This being the position, the rejection of Exh.82, also cannot be faulted with.

5. The Writ Petition, is therefore, without any merit and is accordingly dismissed. No costs.

JUDGE