

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3067 OF 2022

VINAY GENDMAL BATIYA AND ANOTHER
VERSUS
PRAKASH SHEKUJI PATIL AND OTHERS

...
Advocate for Petitioners : Mr. R. R. Deshpande h/f.
Ms. P. R. Deshpande
Advocate for Respondent No.1 : Mr. S. K. Chavan
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 02-03-2022

PER COURT :-

The petitioners are aggrieved by the order passed by the learned Civil Judge, Senior Division, Parbhani, below Exhibit-48 in Special Darkhast No. 14 of 2017, thereby rejecting the Application filed by the petitioners - Judgment Debtors No.1 and 2, under Section 47 of the Code of Civil Procedure, 1908 ("CPC"), for not executing the Decree.

2. Special Civil Suit No. 21 of 2009 filed by the respondent No.1 - original plaintiff was decreed on 06.05.2017. The petitioners - original defendants No.1 and 2 and defendant No.3 Kiran Jagdish Chandak were directed to jointly and severally pay to the plaintiff an amount of Rs. 20,23,000/- (Rs. Twenty Lakhs Twenty Three Thousands Only) along with interest @ 9% per

annum from the date of filing of the suit till its realization. The petitioners-defendants No.1 and 2 were directed to pay to the plaintiff, jointly and severally an amount of Rs.1,02,387/- (Rs. One Lakh Two Thousand Three Hundred Eighty Seven Only) along with interest @ 9% per annum from the date of filing of the suit till its realization.

Regular Civil Appeal No. 118 of 2017 filed by petitioner No.1 /original defendant No.1 challenging the Decree in Special Civil Suit No. 21 of 2009, is dismissed. Second Appeal filed by the petitioners is also dismissed.

3. Special Darkhast No. 14 of 2017 is filed by respondent No.1- original plaintiff seeking execution for Decree passed in his favour. In the said proceeding, Application (Exhibit-48) is filed by the petitioners objecting to the execution on the ground that, since the petitioners being partners of partnership firm "M/s. Gurudev Bricks Industry", and as the partnership firm was not made party defendant, the Decree cannot be executed against the petitioners. Since the procedural and mandatory requirements of the Indian Partnership Act, 1932, are not complied, therefore, the Darkhast is not maintainable and the Decree cannot be executed. This application (Exhibit-48) is rejected by the Executing Court. Hence, the present petition.

4. I have heard learned Advocate for the petitioners at length.

5. Admittedly, in the suit partnership firm was not party. It has come in the Judgment of the first Appellate Court that, the plaintiff and defendants No. 1 to 3 entered into the agreement on 01.08.2006. The partnership deed at Exhibit-136 was executed and the firm came into force on 15.05.2007. Petitioners-defendants have not pleaded that the defendants No. 1 to 3 are partners of a partnership firm and the partnership firm be made party. The aspects about partnership and partnership firm were already raised by the petitioners before the District Court and before this Court. After considering the same, the District Court and this Court has dismissed the appeals filed by the petitioners.

6. The Executing Court has rightly held that under Section 47 of the CPC, the question between the parties relating to execution, discharge or satisfaction of decree is to be determined by the Executing Court. The order impugned in the present petition is a well reasoned order. It appears that, the petitioners – Judgment-debtors are trying to avoid execution of decree by raising erroneous objections.

7. The Executing Court has rightly rejected the application (Exhibit-48) by giving cogent reasons. No illegality or perversity is

found in the order impugned in the petition. No case is made out to exercise extraordinary writ jurisdiction.

8. Writ petition being devoid of merits is dismissed. No costs.

(NITIN B. SURYAWANSHI)
JUDGE

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