

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

WRIT PETITION NO.3740 OF 2022

ARVIND PUNDLIK DHAMNE  
VERSUS  
RAMNATHAPPA GOPINATHAPPA HINGMIRE AND OTHERS

...  
Advocate for Petitioner : Mr. Vijay Langhe h/f. Pooja Langhe.

.....

**[CORAM : NITIN B. SURYAWANSHI, J.]**

**DATE : 25<sup>th</sup> MARCH, 2022**

**ORDER :**

1. The petitioner is aggrieved by the order passed by learned 8<sup>th</sup> Joint Civil Judge Junior Division, Aurangabd, below Exhibit-20 in Regular Darkhast No. 632017, whereby the application filed by Judgment Debtor No. 1/Respondent praying to recall the precept dated 12.11.2018 in the interest of justice, is allowed.

2. The record indicates that the application Exhibit-18 praying for setting aside the exparte order is filed by Judgment Debtor No. 1. In roznama dated 03.11.2018, direction was given to the concerned clerk that 'do not issue precept till the order is passed on

Exhibit-18'. In spite of this from the record it is revealed that the precept was sent on 12.11.2018, vide outward No. 12518/2018. In these facts, the Executing Court has allowed the application filed by the Judgment Debtor No. 1 and issued notice to the concerned clerk calling his explanation and sent letter to the Collector communicating that the execution proceedings to be stopped till further orders from the Court.

3. The learned advocate for the petitioner by placing reliance on Barkat Ali & Anr. V. Badri Narain (D) by L.Rs (AIR 2008 Supreme Court 1272), Mahadeo s/o Dinbaji Satwane Vs. Anandrao s/o Ramkrishna Bicchu (Writ Petition No. 12010/2018), Kisan Bhiiji Dalvi since deceased through L.Rs, Mohan Kisan Dalvi and ors. Vs. Krishnabai Maruti Dalvi (2000(4) Mh.L.J.) and Prakash Natyaba Bhosale Vs. Laxman Ganaba Bhosale (AIR 2003 Bombay 41), has vehemently urged that once the precept is sent to the Collector, the Executing Court becomes *functus officio* and has no authority to decide the question in respect of contravention of provisions of law or non- enforceability of decree due to subsequent events.

4. There can be no dispute about the preposition of law laid down by the above citations. However, in the facts of the present case, the Executing Court was justified in directing the Collector to stay the proceedings, in view of position on record that in spite of specific direction not to issue precept till the order is passed on Exhibit-18, the Court was perfectly justified in passing the impugned order. It is not in dispute that the Exhibit-18 is yet not decided. In that view of the matter also, the impugned order cannot be faulted with. There is no merit in the petition. The writ petition is dismissed. No costs.

**[NITIN B. SURYAWANSHI]**  
**JUDGE**