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

922 CIVIL REVISION APPLICATION NO.197 OF 2019

Nandkishor Prabhakar Wadagale Died
Through LRs Vilasini Nandkishor Wadagale and Ors .. Applicants

Versus

Surjitkaur Mahendrasing Muchal and Ors .. Respondents

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Advocate for Applicants : Mr. Ashutosh S. Kulkarni
Advocate for Respondent Nos.1 and 3 : Mr. S.S. Patil

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CORAM : MANGESH S. PATIL, J.

DATE : 07-01-2022

PER COURT :

I have heard both the sides with consent.

2. The petitioners are challenging the order passed by the executing court in a decree obtained by the respondent for specific performance of agreement of sale of an immovable property, on their application preferred under Section 47 of the Code of Civil Procedure (hereinafter, in short 'C.P.C.'). Though originally writ petition was preferred challenging the order rejecting the objection, since the respondent raised an objection regarding maintainability of the writ petition in view of availability of remedy under Section 115 of the

C.P.C., the petitioners with the leave of the Court granted by the order dated 01-10-2019 converted the writ petition as a civil revision application. I am making these observations only because to my mind, there is a bar for challenging the order which the petitioners are seeking to challenge by way of a revision in view of the amendment to the provision of Sec. 115 of the year 2002. The order which is under challenge even if it is reversed would not have the effect of terminating the proceeding before the executing Court which is a condition precedent for invoking the remedy of revision. Be that as it may, since the respondents had raised an objection pursuant to which the matter was converted as a revision, we need not go into these aspects.

3. After hearing the parties what transpires is that the respondents herein had filed a suit bearing R.C.S. No.540 of 1988 for specific performance of an agreement to sell an immovable property against the petitioners' predecessor who happened to be the husband of petitioner no.1 and father of the rest of the petitioners. The suit was decreed *ex parte* by the judgment and order dated 06-03-1990. The respondents put the decree to execution by filing a Regular Darkhast No.454 of 2000. By filing an application at Exh.43, the petitioners sought to obstruct the execution on various grounds,

which can be listed as under :-

- (a) The summons in the suit was not duly served to their predecessor;
- (b) The predecessor of the petitioner was not mentally sound to execute the agreement of sale;
- (c) The property was allotted to the petitioners' predecessor because of his past service in the armed forces and could not have been transferred without the permission of the government.

4. Apart from these objections, the petitioners have also made an attempt to demonstrate that even in the execution proceedings they were never served with any notice.

5. In view of the objections raised by the respondents regarding maintainability of the objection and non-service of notice by the petitioners, executing court by the order dated 22-09-2014 held it to be maintainable.

6. The issues were framed pursuant to the aforementioned objection. The petitioners thereafter examined couple of witnesses i.e. petitioner nos.1 and 2. By the order under challenge, the

objection has been turned down.

7. Though it is a matter of record that the respondents had not challenged the order dated 22-09-2014 passed by the executing court holding the objections raised by the petitioners to be maintainable, one need not feel bound by that order as it goes to the root of the jurisdiction of the executing court.

8. Suffice for the purpose to observe that by virtue of the provision, specific wording of Sec.47 of the CPC that, an executing court can only enquire into the execution, discharge or satisfaction of the decree while entertaining objection raised under that provision either by the Judgment Debtor or his representative in interest.

9. Going by the nature of the objections being raised, in my considered view, none of these objections would fit into the category of execution, discharge or satisfaction of the decree.

10. The petitioners may have their own remedies and could have raised all these objections either by filing a separate suit or may be by challenging the decree which has been put to execution.

11. Even according to the petitioners, their predecessor -

original defendant never challenged that decree though he was alive till the year 2002 i.e. for a period of more than 12 years after passing of the decree. Even the petitioners independently did not make any attempt to challenge that judgment and decree during this long period.

12. As can be seen from the evidence particularly the testimonies of the petitioner nos.1 and 2 recorded in the present inquiry, they were aware about filing of the execution proceedings and had even appeared through Advocates in the year 2004, however they have taken almost 9 years thereafter to file the present objection to the execution of the decree.

13. Considering all the aforementioned facts and circumstances, I find no reason but to concur with the observations and conclusions of the executing court that these circumstances clearly indicate that there is no substance in the objection and even the petitioners are not entitled to raise those objections.

14. The Civil Revision Application is dismissed.

(MANGESH S. PATIL)
JUDGE