

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

938 WRIT PETITION NO.11661 OF 2022

**NILESH TUKARAM NEMADE
VERSUS
HEMLATA MANOHAR INGLE AND ANOTHER**

...
Advocate for Petitioner : Mr. Milind Madhukar Patil

...

CORAM : SANDEEP V. MARNE, J.

DATE : 24-11-2022

PER COURT :

. By this petition, petitioner has challenged the order dated 29.07.2022 below Exh.40 as well as the order dated 28.03.2022 below Exhs.33 and 37 passed by Jt. Civil Judge Junior Division, Raver.

2. The applications at Exhs.33 and 37 were filed by petitioner under the provisions of Section-47 and Order-21, Rule-97 r/w. Section 151 of the Code of Civil Procedure (hereinafter referred to as the 'CPC') objecting the execution proceedings. One of the grounds of objection was that the decree was obtained by fraud by describing petitioner as major, when in fact he was minor. Certain other issues were also sought to be raised. The Court has rejected the applications by order dated 28.03.2022. The application at Exh.40 was filed for review of the order dated 28.03.2022. That

application is rejected by order dated 29.07.2022.

3. Petitioner has already availed of all the remedies of filing an appeal before District Judge, Second Appeal before this Court and the S.L.P. before the Supreme Court. After having lost of all those appeals, petitioner has come out with a novel case about raising issue of his minority, which could very well be raised while the suit and the appeals were being decided. Such plea is therefore clearly barred by the principle of constructive *res judicata*. Reliance of Mr. Milind Patil, learned counsel for petitioner on the provisions of Section-47 of the CPC that the executing court can decide “all questions arising between the parties” is totally misplaced because the ambit of jurisdiction under Section-47 is restricted to questions relating to execution, discharge or satisfaction of the decree alone.

4. The provisions of Section-47 cannot be misused to raise issues which could have been raised prior to decision of the suit. It is trite that the executing court cannot go behind the decree. The executing court has rightly rejected the applications of petitioner. The petition is devoid of merits and the same is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)