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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.14929 OF 2022
IN
WRIT PETITION NO. 11640 OF 2021

Nemichand Hukumchand Tathed

APPLICANT

VERSUS

Jotsnyaben Kantilal Shah and Others

RESPONDENTS

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Mr. Vinesh Solshe h/f Mr. Mahesh H. Patil, Advocate for applicant
Mr. M. S. Kulkarni, Advocate for respondent NO.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 14th NOVEMBER, 2022

ORDER :

1. Writ Petition No. 11640 of 2021 is decided against the applicant, by order dated 17th August, 2022. The present civil application is filed seeking deletion of observations made by this Court in paragraph No. 11 of the said order.

2. In paragraph No.11 of the said order, this Court has observed -

“11. Apparently, the objection filed by the petitioner is in collusion with the tenant, his real brother. In spite of compromise decree having been passed in the year 2017, the same is yet to be executed after a lapse of almost five years.”

3. Learned advocate for the applicant submits that in the objection raised by the applicant before the Executing Court,

Under Order XXI, Rule 97 of the Civil Procedure Code, a specific issue is framed - '*whether the applicant proves collusion of decree between the decree holder and the judgment debtor*'. He, therefore, submits that these observations may come in the way of the applicant.

4. The observations made in paragraph No.11 of the order dated 17th August, 2022 are in the context of deciding the writ petition preferred by the applicant / petitioner.

5. While deciding the objection raised by the applicant before the Executing Court, the Executing Court shall decide the same on the basis of evidence led before it and shall not be influenced by the observations made in paragraph No.11 of the said order.

6. With these observations the civil application is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE