

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10454 OF 2019

M/s. Shah Nagindas Mahchharm and Sons

Petitioner

.. (Orig. Decree Holder)

Versus

Nav Maharashtra Containers Pvt. Ltd and Ors.

Respondents

.. (Ori. Judgment Debtors)

.....

- Mr. Vishwanath B. Rajure, Advocate for Petitioner.
- Mr. Manish P. Gitay, Advocate for Respondent Nos.3B to 3D.

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 06, 2022.

P.C.:

1. Heard Mr. Rajure, learned Advocate appearing for Petitioner (decree holder) and Mr. Gitay, learned Advocate for Respondent Nos.3B to 3D at length.

2. Perused the impugned order below Exhibit '1' in Special Darkhast No.43 of 1993 dated 19.06.2019 in execution proceedings. Mr. Rajure representing the Petitioner i.e. decree holder submitted that the judgment debtor's legal heirs are evading disclosure of the properties inherited by them from the original judgment debtor. He submitted that the learned Trial Court has sought clarification on the properties from the decree holder and he would require more time to furnish the same. Though the impugned order was passed on 19.06.2019, this Court is aware of the fact that due to covid 19 pandemic and the ensuing lockdown the matter could not be prosecuted in the Court and therefore there was delay.

3. Be that as it may, perusal of the impugned order does not shut out the right of the decree holder. Mr. Rajure submitted that the legal heirs of the judgment debtor have not filed any Affidavit-in-Reply to Exhibit 170 stating their case that they have not inherited any properties from the deceased original judgment debtor and therefore are not liable to pay any amount to the decree holder.

4. Since the right of the decree holder is not shut out by the learned Trial Court, it shall be open to the decree holder to furnish further and better particulars as also the necessary clarification about the properties received/inherited by the legal heirs of the judgment debtor - Mr. Kanhaiyalal.

5. Record indicates that Exhibit 170 is still kept pending on the file of the Trial Court. However, unless and until the aforesaid information is supplied and furnished to the Trial Court, the same cannot be decided. In the event if the decree holder is in a position to furnish further and better particulars of the properties of the judgment debtor – Mr. Kanhaiyalal and the necessary clarification sought for by the learned Trial Court, the Trial Court is directed to decide Exhibit 170 as expeditiously as possible in accordance with law after hearing both parties. The Trial Court shall not be influenced by any observations made in the present order.

6. With the above direction, Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]

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