

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.13006 OF 2019

Baban Namdeo Bhondve

.. Petitioner

Versus

Dattatray Narayan Bhondve & Ors.

.. Respondents

Mr.Sachin Pawar a/w Mr.Nikhil P. Mallelwar for the petitioner.

Mr.S.V. Sadavarte for the respondents.

**CORAM : ROHIT B. DEO, J.
DATE : 7th JUNE 2022**

P.C.:-

1. The note of the Registry is that the respondent 5C is dead. The learned counsel for the petitioner submits that it would not be necessary to bring on record the legal heirs of the deceased respondent 5C and the petitioner may be permitted to delete the respondent 5C from the array of respondents. The request is allowed at the risk of the petitioner.

2. The petitioner is assailing the order dated 3.11.2018 rendered by the third Joint Civil Judge, Junior Division, Pimpri, Pune in Civil Miscellaneous Application 23 of 2014 whereby it is held that the application preferred by Mr.Dattatray Narayan Bhondve under Section 47 of the Code of Civil Procedure, 1908 ("Code") is maintainable.

3. Questioning the maintainability of the petition, respondent 1 has twin submissions to canvass. The first submission is that since order is ultimately rendered in exercise of jurisdiction under Section 47 of the Code, the order is appealable and petition is not an appropriate remedy, the other submission is that the order impugned does not decide the rights of the parties. All that is held is that the applicant Mr.Dattatray Narayan Bhondve is entitled to prosecute the application under Section 47 of the Code, and that there is no propriety in interdicting with the order impugned which decides no rights or liability.

4. While the learned counsel for the petitioner has a counter narrative, I am satisfied that all that is done is to hold that the application under Section 47 is maintainable. Such view is unexceptionable since the applicant Mr.Dattatray Narayan Bhondve contends that execution is not proceeding consistent with the compromise decree and considering the wide language of the provisions of Section 47, such contention will have to be adjudicated in exercise of powers under Section 47. Whether the contention has merit or is frivolous is not the issue. It is for the trial Court to consider the contention on merits at a later stage.

5. I see no reason to interfere with the order impugned.

Needless to observe that every contention, raised by Mr.Dattatray Narayan Bhondve or then the petitioner Mr.Baban Namdeo Bhondve is kept expressly open for the Executing Court to decide at an appropriate stage. The learned Executing Court is requested to decide the application under Section 47 of the Code as expeditiously as possible and in any event, within four months.

6. Petition is disposed of in aforestated terms.

ROHIT B. DEO, J.