

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1135/2018

CHANDRASHEKHAR S/O NARAYAN MALKHEDE

..VS..

SMT. RAJABAI W/O CHUDAMAN GANER AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.H. Matetwar, Advocate for the petitioner

Mr. A.R. Fule, Advocate for respondent no. 3

CORAM : AMIT B. BORKAR, J.

DATED : 21/09/2022

The legality and validity of the order dated 03.01.2017 is challenged by the decree-holder which rejects an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (for short the "CPC") to implead third party as judgment debtors.

2. The petitioner had filed suit for specific performance for enforcement of an agreement to sale with the averments that the petitioner had paid an amount of Rs.4,75,000/- towards the earnest amount. The said suit was partly decreed directing the judgment-debtors to refund an earnest amount of Rs.4,75,000/- alongwith interest at the rate of 18% per annum. For execution of the said decree, the petitioner filed Special Darkhast No. 145/2008. The Executing Court had issued warrant under Order XXI Rule 43 of the CPC in which, it was recorded that the judgment debtor does not have any movable

property. The third party had filed an application bearing MJC No. 413/2008 contending ownership of the suit property. The said application is still pending. Based on the application filed by the third party bearing MJC No. 413/2008, the decree-holder had filed an application before the Executing Court to implead them third party as judgment-debtors. By the impugned order, the Executing Court has rejected the application. The petitioner has, therefore, filed the present writ petition.

3. On perusal of the impugned order, it appears that the Trial court had not passed decree against the third party. There is no decree in force against the third party. If that be so, the third party cannot be made judgment-debtors in Execution proceedings of a decree not passed against them. There is no error of jurisdiction committed by the Executing Court by rejecting the application under Order I Rule 10 of the CPC.

4. The petitioner shall have all rights to enforce the decree in accordance with law.

5. With this clarification, the writ petition is dismissed. No costs.

6. Pending civil application, if any, is also disposed of.

JUDGE

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