

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

**WRIT PETITION NO. 6035 OF 2018**

Sheshrao S/o Natthuji Kude

-- Petitioner

Vs.

Bhaskar S/o Natthuji Korde (Dead) Through  
LRs

-- Respondents

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

Mr. V.K. Paliwal, Advocate for Petitioner

Mr S.S. Sharma, Advocate for Respondent Nos.1-A to 1-E

**CORAM : MANISH PITALE, J.**

**DATE : 24<sup>th</sup> JUNE, 2022**

The office note shows that the respondent Nos.3 and 4(d) are unserved. It is brought to the notice of this Court that respondent No.3 has been proceeded ex-parte before the Court below also and the respondent No.4(d) is the petitioner's brother. The contesting respondents are only legal representatives of respondent No.1, who are represented through counsel before this Court. Therefore, the petition is taken up for consideration on merits.

2. The learned counsel for the petitioner submits that in the present case, by the impugned order dated 04/08/2018, while framing an issue for determination in an enquiry under

Section 47 of the Code of Civil Procedure, 1908, the Executing Court has committed a fundamental error in placing the burden on petitioner as the decree holder to demonstrate as to how the decree is executable.

3. It is submitted that when the contesting respondents are objecting the execution of the decree, the burden ought to be on the contesting respondents.

4. The learned counsel for the contesting respondents invited attention of this Court to Section 22 of the Specific Relief Act, 1963 and sought to argue that the objection sought to be raised is well supported by the provision itself.

5. This Court is refraining from making any comment on the merits of the objection sought to be raised on behalf of the contesting respondents. But, it is clear that in the present case, the Executing Court has committed a basic error in placing burden on the decree holder to show as to how the decree is executable. If the objectors have come up with a case that for some reason the decree is rendered inexecutable, the burden obviously is upon the objectors i.e. the contesting respondents to support such a contention.

6. Hence, the impugned order is found to be wholly unsustainable. Accordingly, the writ petition is allowed and the impugned order is quashed and set aside and the enquiry

under Section 47 of the Code of Civil Procedure, is directed to proceed by asking the contesting respondents / judgment debtors to demonstrate as to how the decree is inexecutable.

7. The Executing Court is directed to undertake the proceedings expeditiously.

**JUDGE**