

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

34 WRIT PETITION NO.6650 OF 2019

**NAMDEO NATHU PATIL THROUGH LRS
HIRKANBAI NAMDEO PATIL AND OTHERS
VERSUS
PRAKASH VISHWAS PATIL**

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Advocate for Petitioners : Mr. Pratap P. Mandlik
Advocate for Respondent : Mr. Ujwal S. Patil

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : 24-02-2023

PER COURT :

1. The challenge in the petition is to the order dated 10.04.2019 allowing the respondents application for restoration of Special Execution Petition No.13 of 1987 which had been closed by the Court. The execution petition of the year 1987 was filed by the maternal aunt of the respondent and during the pendency of the execution proceeding, the maternal aunt expired and father of the respondent was brought on record. Subsequently, he expired on 09.11.1992 and thereafter due to lack of knowledge the legal representative could not be brought on record. The Executing Court after giving ample opportunities and after a period of 7 ½ months, closed the execution proceedings.

2. As the respondent was not aware of the pendency of the

execution proceeding, no application could be filed before the Executing Court for taking the execution petition on record. On 20.03.2013, upon acquiring knowledge about the execution proceeding initiated by his maternal aunt, the respondent along with the other legal heirs filed an application before the Executing Court for setting aside the abatement. The application preferred by the respondent was rejected in view of the finding that the special execution petition had not abated, but was closed and as such there was no necessity for preferring the application. On 09.04.2019 the Day Application No.2 of 2019 was preferred by the respondent seeking restoration of the proceedings in Special Execution Petition No.13 of 1987. By the impugned order, the said application came to be allowed and the Special Execution Petition No.13 of 1987 was restored to its original stage and direction was passed to issue notice to the judgment debtor.

3. Heard the learned counsel appearing for the parties.

4. The learned counsel appearing for the petitioner submits that after the rejection of the application for condonation of delay and restoration of the execution petition, on the very next date the day petition was preferred. He further submits that although the petitioner was heard during the hearing of the application filed for

condonation of delay, no opportunity of being heard was given to him by the executing Court while hearing the Day Application No. 2 of 2019. He further submits that the decree of 1993 which had closed was sought to be proceeded with in the year 2019 without hearing of the petitioner.

5. Per contra, the learned counsel appearing for the respondents submits that by way of day petition the respondents sought a direction to proceed with the execution proceeding of the year 1987 and as there is no abatement, the execution proceeding is to be pending on the file of the executing Court and as such there was no necessity of hearing the petitioners.

6. Considered the submissions of the parties.

7. The facts are not in dispute inasmuch as the execution proceeding of the year 1987 is now to be proceeded with against the petitioners - Judgment debtors. The petitioners were heard at the time of considering the application for condonation of delay and restoration of the Special Execution Petition of the year 1987 and there is no reason as to why the petitioners could not have been afforded an opportunity of being heard while deciding the Day

Application No.2 of 2019. It is the contention of the learned counsel for the respondents that the application simplicitor was to proceed further with the Special Execution Petition No.13 of 1987, however from the record it appears that the Counsel for the respondent was heard at length and the detailed order of six pages has been passed by the Executing Court. Principles of natural justice demand that at every stage of the proceedings the parties are heard, irrespective of the settled position of law that execution proceedings do not abate. However the petitioners are entitled to submit their say and be heard in the matter. The order passed in violation of the principles of natural justice, cannot be said to be a valid and legal order.

8. For the reasons above, the impugned order dated 10.04.2019 is quashed and set aside.

9. Let parties appear before the Executing Court on 20.03.2023 for the hearing on the Day Application No.2 of 2019.

10. It is made clear that no adjournment will be granted on that day and the arguments of both the parties will be concluded on the said date. Upon conclusion of the arguing counsel, let the Day Application No.2 of 2019 be decided by the Executing Court within a period of three weeks thereafter.

11. With the aforesaid observations, the writ petition stands allowed.

(SHARMILA U. DESHMUKH, J.)

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