

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

WRIT PETITION NO. 12945 OF 2023

1. Narayan Tukaram Raul
2. Gokulsingh Tukaram Raul
3. Dipak Hilalsingh Patil
4. Shakuntala Vasant Patil

...Petitioners

Versus

1. Dilip Mukundrao Patil
2. Nikhil Dilip Patil
3. Vinod Narayan Raul
4. Pratibha Vinod Raul

...Respondents

...

Advocate for Petitioners : Mr. Harshal Prakash Randhir

Advocate for the Respondent No.2 : Mr. Ashwin V. Hon

...

CORAM : SHAILESH P. BRAHME, J.

DATE : 9th NOVEMBER 2023

PER COURT :

. Heard the learned Counsel for the parties finally.

1. The petitioners are challenging rejection of application at Exhibit-23 overruling the objection raised against the Special Darkhast No.7/2020 under Section 47 of the Civil Procedure Code. The petitioner is a third party in execution filed by the respondent no.1 and 2/deed holders against the respondent no.3 and 4/ judgment debtors. The execution of

decree of specific performance recorded in Lok-Adalat by the consent of the parties in Special Civil Suit No.40/2017 is pending.

2. The petitioners filed application at Exhibit-23 stating that the decree in execution is collusive and theirs rights are affected being owners of the suit land. It is further contended that they have filed Regular Civil Suit No.55/2023 challenging the consent decree which is pending. The learned Counsel for the petitioners submits that the decree in Special Civil Suit No.40/2017 cannot be executed till the suit filed by them is decided.

3. The learned Counsel has vehemently submitted that the respondents have played fraud. He has referred to the pleadings of plaint in Regular Civil Suit No.55/2023. According to him, the consent decree passed in Special Civil Suit No.40/2017 is null and void. The learned Judge has committed patent illegality in rejecting his application.

4. The learned Counsel for the respondents submits that Section 47 cannot be invoked by person who is not party to the execution. It is further pointed out that the petitioners have filed application at Exhibit-5 for temporary injunction which

is alternate and adequate remedy. He supports the impugned order.

5. The petitioners have filed Regular Civil Suit No.55/2023. I have gone through the pleadings and the prayers of the suit. An application at Exhibit-5 has also been filed which is under consideration. The petitioners have prosecuted application (Exhibit-23) in the execution parallely. The respondents have rightly contended that it is not permissible to entertain application (Exhibit-23).

6. The petitioners are neither party to the original suit nor to the execution proceeding thereof. Section 47 of CPC does not permit third person to raise the objection for the execution. The application (Exhibit-23) therefore is not maintainable. It is rightly rejected.

7. The learned Counsel for the petitioners has submitted that the application of the petitioners is rejected without conducting due enquiry and permitting them to lead evidence. He refers to a judgment of the Andhra Pradesh High Court rendered in the matter of **V Srinivasa Reddy Vs. N. Hanumantha Reddy**. He has pointed out paragraph no.23. The ratio of the judgment is not applicable to the present case. The objection

of the petitioners was under Section 47 of CPC. The scope of enquiry under Section 47 and Order 21 Rule 97 is distinct. No benefit of the decision cited can be given to the petitioners.

8. I find no substance in the petition. The writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

Najeeb.