

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2708 OF 2016

Bhagwan Devrao Naralkar

.... Petitioner

Versus

Yogita Bhagwan Naralkar
and others

.... Respondents

.....

Mr. V.B. Garud, Advocate for the Petitioner

Mr. W.S. Jadhav, Advocate for Respondent Nos. 1 and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by the learned 2nd Joint Civil Judge, Junior Division, Patihan, below Exhibit-17 in Regular Darkhast No.41 of 2012, there by allowing the application filed by the decree holder for amendment in the execution petition.

2. The decree holder has filed the execution petition for execution of the decree passed on 06/03/1996. The judgment debtor appeared and filed objection by raising ground of limitation and other grounds.

3. After going through the objection filed by the petitioner/judgment debtor, the decree holder filed application Exhibit-17 seeking amendment in the execution petition. The said application is allowed. The judgment debtor is aggrieved by the said order. Hence, the present petition.

4. Heard the learned advocate for the petitioner and the learned advocate for respondents. Perused the grounds raised in the petition, annexures and the impugned order.

5. The learned advocate for the petitioner, by relying on *The Ratnakar Bank Limited Vs. Usha Rajaram Nimbalkar and others; 2013 (4) ALL MR 538*, submits that the Executing Court has no power to allow the amendment application under Order VI Rule 17 of the Code of Civil Procedure. He further submits that the execution petition filed by the respondent is beyond limitation, and the Executing Court, without considering the objection of the petitioner, has erroneously proceeded to allow the amendment application of the respondent. The Executing Court ought to have first considered the objection raised by the petitioner and then ought to have proceeded to consider the application if the Executing Court held in favour of decree holder.

He, therefore, submits that the impugned order is liable to be quashed and set aside.

6. The learned advocate for the respondent, on the other hand, supports the impugned order.

7. Perusal of the impugned order reveals that the Executing Court has allowed the application, holding that the said amendment is necessary, and it would not change the nature of the decree. Hence, he permitted the amendment. The Executing Court has rightly exercised the discretion in favour of the respondent, and there is no illegality or perversity in the order impugned in the petition.

8. In *Ratnakar Bank Limited* (supra), learned Single Judge of this Court has held that the Executing Court cannot exercise power under Order VI Rule 17 as the said provision applies to the amendment of the pleadings, and cannot apply to the execution proceedings. It is further held that the Executing Court can exercise inherent power under Section 151 and power to permit amendment under Section 153 of the Code of Civil Procedure, in the execution proceedings. In that view of the matter, this decision, in my view, does not support the case of the petitioner.

7. In the result, the writ petition is dismissed.

8. The Executing Court is directed to consider the objection of the petitioner within three weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane