

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.191 OF 2023

VIJAYMALA WAMANRAO TELGAWE
VERSUS
HIRKANBAI WAMANRAO PATIL DIED THROUGH LRS KANTABAI
NILKANTRAO BIRAJDAR AND OTHERS

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Mr. Kuldeep S. Patil, Advocate for the Petitioner.
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CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 07, 2023.

PER COURT :

1. Heard learned counsel appearing for the Petitioner.
2. The petitioner is aggrieved by the order passed by the Executing Court dated 31st March, 2018, passed in Exh.60 in R.D. No.31 of 2014, partly allowing the objections raised by the judgment-debtor Nos.3 and 4, on the ground that the decree is not executable as against the judgment-debtor No.1 as she has expired prior to the evidence being recorded.
3. Learned counsel for the Petitioner submits that the Petitioner who was the original plaintiff had filed suit for specific performance for agreement of sale executed by the Respondent No.1 with the Petitioner, which was consented by the Respondent Nos.2 to 4, who are the daughters of Respondent No.1. The suit

came to be decreed. For execution of the said decree, Regular Darkhast No.31 of 2014 was taken out by the Petitioner in which the objections came to be raised as regards the executability of decree against the dead person, which came to be partly allowed.

4. The Executing Court has observed that the Respondent No.1 had expired before the evidence of the Petitioner could be recorded and further that no exemption under Order XXII Rule 4(4) of the Code of Civil Procedure, 1908 was sought and as such, the decree which is passed is not executable as against the dead person. In my view, there is no infirmity in the order which is passed by the Executing Court. The learned counsel for the Petitioner submits that as the Respondent Nos.2 to 4, are the legal heirs of the deceased-Respondent no.1, the decree can be executed as against Respondent Nos.2 to 4.

5. The impugned order is on an application raising objections only as far as executability of decree as against Respondent No.1, who expired in the year 2013 and there is no objection raised as far as executability of the decree as against the Respondent Nos.2 to 4 is concerned.

6. In view of above, the writ petition is dismissed. The Executing Court is at liberty to proceed as against the Respondent Nos.2 to 4 in accordance with law.

(SHARMILA U. DESHMUKH, J.)