

SPChauhan

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

**SECOND APPEAL NO. 877 OF 2018
WITH
CIVIL APPLICATION NO. 13907 OF 2018**

Haribhai @ Harilal Maujibhai Patel and others ... Appellants

Versus

Neera Madanlal Lodha and others ... Respondents

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Mr. S.P. Brahme Senior Counsel i/b. Mr. D.K. Rajput – Advocate for Appellants
Mr. A.D. Kasliwal – Advocate for Respondent Nos. 1 and 2
Mr. B.R. Warmaa – Advocate for Respondent No.3

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CORAM : GAURI GODSE, J.
DATE : 07th February, 2023

PER COURT :

1. This Second Appeal is filed by a third party obstructionist who had filed an application under Order XXI Rule 97 of the Code of Civil Procedure, 1908, in execution of the decree for specific performance, executed in favour of respondent nos. 1 and 2. It is submitted on behalf of the appellants that so far as the objections filed by the present appellants are concerned, they were required to be adjudicated as per the law that is laid down in various decisions of the Hon'ble Supreme Court as well as this Court.

2. Learned counsel for the appellants submit that the objections raised on behalf of the appellants could not have been decided in the summary manner and should have been decided as per the procedure laid down under Order XXI of Code of Civil Procedure, 1908 (“CPC”).
3. Learned counsel for the appellants, therefore, submit that the perusal of the impugned order passed by the executing court would show that it is decided in a summary manner and the objections are not adjudicated as per the various provisions of Order XXI of CPC. It is submitted that even the first appellate court has not dealt with the objections filed by the appellants that were required to be adjudicated as per the settled law. Hence, he submits that question of law arises in the Second Appeal and the same requires to be admitted.
4. Perusal of the impugned order passed by the Executing Court shows that there is no issue framed with respect to the specific contention raised by the present appellants that he is owner of the suit property, in respect of which the agreement for sale was executed and decree for specific performance was passed. The objections of the appellants are decided in a summary manner. Hence, there is merit in the submission made on behalf of the

appellants that the procedure as laid down under the provisions of Order XXI of the CPC was not followed. Hence, the Second Appeal raises a substantial question of law as to whether provisions of Order XXI of CPC are followed while deciding the objections filed by the appellants.

5. Learned Advocate appearing for the respondent nos. 1 and 2 who are decree holders submit that the decree under execution is passed in their favour on 16th September, 2013 and the First Appeal filed by the defendant was dismissed on 24th August, 2013. Hence, he submits that if the Second Appeal is admitted and kept pending serious prejudice will be caused to the respondent nos. 1 and 2 who are the decree holders. He, therefore, on instructions, submits that instead of keeping the Second Appeal pending for decision on the said point, by consent of the parties matter may be remitted back to the executing Court for the purpose of adjudicating the objections that are filed by the present appellants. The request made on behalf of respondent nos. 1 and 2 is a reasonable request.
6. Learned counsel appearing for the respondent nos. 1 and 2 states that in fact partially the decree under execution is executed by registration of sale deed in favour of respondent nos. 1 to 3, but decree with respect to handing over the possession is not

executed. However, the learned Advocate for the appellants concedes for the request made on behalf of the appellants. Hence, the Second Appeal is disposed of by consent of both the parties by passing following order :

i. The impugned judgment and order dated 01st February, 2016, passed by the 4th Civil Judge Senior Division, Aurangabad, below exhibit 10-d in Special Darkhast No.57 of 2014 as well as judgment and decree dated 01st October, 2018 passed by the learned District Judge-4, Aurangabad, in Regular Civil Appeal No. 66 of 2018 is quashed and set aside.

ii. The objections filed by the present appellants at exhibit 10-d in Special Darkhast No. 57 of 2014 are restored to file. The executing Court to frame proper issues and adjudicate the objections by following the procedure as prescribed under Order XXI Rule 101 of the Code of Civil Procedure, 1908.

iii. Respondent nos. 1 and 2 decree holders would be at liberty to make appropriate application before the executing Court for early disposal of the proceedings.

iv. Appellants shall not seek unnecessary adjournment and will co-operate for early disposal of the proceedings.

v. Needless to say that since the issue is arising out of the obstructionist proceedings endeavor shall be made to decide the proceedings as early as possible.

vi. Execution of the decree with respect to the handing over the possession of the suit property is stayed for a period of six weeks from today.

vii. Appellants shall make appropriate application before the executing court for further protection.

viii. Parties to appear in the executing Court before the concerned Civil Judge Senior Division, Aurangabad, on 13th March, 2023.

ix. No formal notice for appearance will be required.

**[GAURI GODSE]
JUDGE**