

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4815 OF 2023

Tanhaji Kalu Ghatge Jadhav Petitioner

versus

Tanaji Tukaram Ghatge @ Jadhav & Ors. Respondents

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- Ms. Aditi Naikare a/w Rushikesh S. Kekane, Advocate for Petitioner.
- Mr. Vijay Killedar, Advocate for Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th APRIL 2023

P.C. :

1. Heard Ms. Aditi Naikare, learned counsel for the Petitioner and Mr. Vijay Killedar, learned counsel for the Respondent.

2. The Petitioner has challenged the order dated 23/01/2023 passed by the Joint Civil Judge, Junior Division, Wai, below Ex.346 in Regular Darkhast No.2 of 1999. By the impugned order learned Judge had rejected the application for

stay to the possession warrant. Learned counsel for the Petitioner submitted that the Commissioner's report in the second round was filed on 04/04/2022. After that, the Petitioner had raised objection for unequal distribution which was not in conformity with the original decree dated 30/04/1990. She submitted that without deciding these objections, the impugned order was passed. She relied on the provisions of Order XXVI, Rule 14. She submitted that the Commissioner's report makes unequal distribution to the detriment to the rights of the Petitioner who was the Judgment Debtor.

3. Learned counsel for the Respondent No.1 who was the decree holder supported the impugned order. However, he did not make any submissions in respect of the objections raised by the Petitioner. He submitted that the copy of objections was given to him by the learned counsel for the Petitioner in the Court today. However, there is no dispute that such objections are already filed before the executing Court.

4. Considering this situation, it would be appropriate if

the Executing Court is directed to consider and decide the Petitioner's objections first and then pass appropriate order in the Execution Proceedings in conformity with Order XXVI Rule 14. It is also important to note that the decree was passed in the year 1990 and it was confirmed upto Hon'ble Supreme Court. Though the decree was passed in the year 1990, till today, it could not be executed for various reasons. Therefore, it is also necessary to decide the Execution Proceedings at the earliest.

5. Considering this discussion, following order is passed :

ORDER

- (i) The order dated 23/01/2023 passed by passed by the Joint Civil Judge, Junior Division, Wai, below Ex.346 in Regular Darkhast No.2 of 1999, is set aside. The said Court is directed to decide the objections raised by the Petitioner first and then then pass appropriate order in the Execution Proceedings.
- (ii) All other contentions raised by both the parties are left open.

- (iii) The objections shall be decided within a period of four weeks from today and thereafter further orders be passed as expeditiously as possible and in any case within four weeks after deciding the objections.
- (iv) With these observations, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)