

SA Pathan

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

WRIT PETITION NO.13983 OF 2023

Narhari Kashiram Divekar (Deceased)

Through Legal Heirs

Balkrishan Narhari Divekar & Ors.

... Petitioners

V/s.

Baban Pandharinath Takle (Deceased) &

Ors.

... Respondents

Mr. Kamlesh P. Mali, for Petitioner.

Mr. Ketan A. Dhavle, for Respondents on instructions.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2023

P.C.:

1. The petitioner is challenging order passed by the Executing Court rejecting application under Section 47 of the Code of Civil Procedure, 1908.
2. The Trial Court in Regular Civil Suit No.71 of 1980 passed a decree on 18 January 2021.
3. The petitioner has filed regular civil appeal challenging the decree.
4. In the said appeal, the petitioner has filed Civil Miscellaneous Application No.90 of 2021 for stay of the decree. Remedy of the petitioner is to seek relief in an application for stay

of the decree. However, he has raised objection before the Executing Court challenging validity of the decree. According to the petitioner, in Covid-19 period such decree could not have been passed.

5. It is for the Appellate Court to consider the objection. However, such objection cannot form basis to hold decree as inexecutable.

6. It is well settled that only a decree which is void or nullity, which can be held to be inexecutable. Therefore, no interference in the impugned order is called for. However, it will be open for the petitioner to move before the District Court for decision of application for stay, if such request is made, the District Court shall decide the application for stay as expeditiously as possible.

7. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)