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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10167 OF 2019

Gram Vikas Pratishtan & Anr.

.. Petitioners

Versus

Malhari Baiju Abhang & Anr.

.. Respondents

Mr. Rahul S. Kadam for Petitioners.

CORAM: SANDEEP V. MARNE, J.

DATE: 16 JUNE 2023

P.C.:

1. By the present Petition, the Petitioners challenge order dated 16 November 2018 passed by the 2nd Joint Civil Judge, Senior Division, Baramati on Application at Exh. 18 in Special Darkhast No. 20 of 2016 filed by the Petitioners (Judgment Debtor) for stay of the execution proceeding.
2. It is the contention of the Petitioners/Judgement Debtor that decree holder had already filed execution petition bearing No. 4 of 2012 and during pendency of those proceedings, the decree holder could not have instituted one more execution proceeding bearing Spl. Darkhast No. 20 of 2016.
3. It is the case of the decree holder that he had initially filed execution petition in the Court of Civil Judge, Senior Division at Pune bearing No. 41 of 2011, which was transferred to the Court of 2nd Joint Civil Judge, Senior Division, Baramati and numbered as 4

of 2012; however, the papers in the said execution proceedings went missing and could not be traced. It is on this count that the decree holder filed Spl. Darkhast No. 20 of 2016 for execution of the decree.

4. The executing Court has arrived at an opinion that the Spl. Darkhast No. 20 of 2016 is required to be maintained in view of the fact that the papers in the earlier execution petition No.4 of 2012 are no more traceable in the Court. Ideally, the executing Court could have adopted the process of reconstruction of papers rather than permitting filing of fresh execution petition. However, that alone may not be a reason enough for interference in extra ordinary jurisdiction of this Court.

5. In the present case, ultimately, the entertainment of Spl. Darkhast No. 20 of 2016 would merely entitle the decree holder to get the decree executed. The Petitioners would be at liberty to raise all objections to the execution proceedings as may be available in law.

6. No case is made out for interference by this Court. The writ petition is rejected.

(SANDEEP V. MARNE, J.)