

VRJ

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

WRIT PETITION NO.10175 OF 2022

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RAMESH
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Santosh Chandulal Mandlecha

... Petitioner

V/s.

Instrumentation Ltd. & Anr.

... Respondents

Mr. Sunny Shah i/by Mr. Ashish T. Suryavanshi for the petitioner.

Mr. Ashwin V. Sakolkar for the respondent No.1.

Mr. Advait Sethna with Ms. Naveena Kumai for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 28, 2023

P.C.:

1. Challenge in this petition is to the order dated 21st March 2022 returning the execution petition to the decree holder for filing it before the Court of competent jurisdiction. The decree sought to be executed arises out of arbitration proceedings under the Micro, Small and Medium Enterprises Development Act, 2006. The decree holder sought execution of the decree of filing of execution petition. The executing Court by impugned order held that the decree needs to be executed by the Court where the office of judgment debtor is situated. It is well settled that if the decree is sought to be executed against the judgment debtor personally, the Court passing the decree will have territorial jurisdiction to

entertain the execution petition. However, if the decree is sought to be executed against the immovable property of the judgment debtor, such decree needs to be filed or transferred to the Court within whose territorial jurisdiction is immovable property is situated.

2. On reading the impugned order, it appears that the executing Court without adjudicating aforesaid issue has directed decree holder to file execution petition before the Court having jurisdiction.

3. It is, therefore, necessary that the executing Court must first arrive at a conclusion as to whether the decree holder intends to execute decree against the judgment debtor personally, or against the property of the judgment debtor. If based on material on record, the executing Court comes to the conclusion that the decree holder intends to execute a decree against the property of judgment debtor, the executing Court would be within its right to transfer such decree through the Court wherein such property is situated.

4. With the result, following order:

a) Impugned order dated 21st March 2022 is quashed and set aside.

b) The executing Court after granting opportunity of hearing to both sides, arrive at conclusion as to whether the decree holder intends to execute a decree against the respondents or against the property of the respondents and accordingly shall pass appropriate orders.

c) The Court will be within its right to direct the judgment debtor to disclose the property if such an application is filed by the decree holder.

5. The civil writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)