

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1622 OF 2018

Jotirling Gramin Bigar Sheti
Sahakari Patasanstha Maryadit
Through Authorized representatative
Duryodhan Natha Yadav ...Petitioner

Versus

Suvarna Shivaji Gosavi
Since deceased through legal heirs
Shivaji Balaso Gosavi & Ors. ...Respondents.

Mr. Mahindra B. Deshmukh for the petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : June 23, 2023.

P. C. :

1. Leave to amend to delete the name of respondent No. 2. The amendment to be carried out forthwith.
2. Heard Mr. Deshmukh, learned counsel appearing for the petitioner.
3. The challenge in the petition is to the order dated 28th September, 2017 rejecting the petitioner's execution application seeking execution of Award passed by the Co-operative Court No 1, Sangli in Co-operative Case No 87/20210. By the Award the

Respondent Not 1A to 1D, Respondent No 2 and Respondent No 3 herein were directed to pay to the Petitioner jointly and severally Rs 51,719/ and interest @ 20% p.a. pm Rs 15,000/ with effect from 1.02.2010 till realization. As there was non satisfaction of the decree, the Petitioner instituted execution proceedings by way of an application under Rule-11 of Order 21 the CPC. On 17.08.2017, warrant was issued against Judgment Debtor Nos. 1A and 1 B i.e. the Respondent Nos. 1A and 1 B herein. The warrant was executed and Judgment Debtor 1B appeared before the executing Court. Vide impugned order dated 28th September, 2017 the executing Court has dismissed the execution application observing that the Judgment Debtor 1B is taking education and is not concerned with the loan which was taken by his mother and as his mother has expired he is arrested.

4. The Executing Court failed to take into consideration the fact that during the pendency of proceedings before the Co-operative Court, the original Defendant i.e. the borrower had expired and her legal heirs which included the Judgment Debtor No 1B were brought on record. The Award passed by the Co-operative Court specifically directs the legal heirs of the deceased borrower, which also includes the Judgment Debtor 1B, to jointly and severally pay the amount. The

Executing Court by cryptic order without any reasoning or finding has dismissed the execution application. Record discloses that no application was filed by the Judgment Debtor No 1B. The Executing Court was bound to follow the procedure prescribed under Order 21 Rule 40 before passing the order of dismissal of the execution application.

5. Bare perusal of the award shows that the Judgment Debtor 1B was also liable to pay the amount of award and as the decree was not satisfied, appropriate steps were taken by the decree holder. The Executing Court cannot go beyond the decree and is bound to follow the procedure prescribed in Order 21 of CPC in proceedings seeking execution of the money decree. That not being done, in my opinion, the impugned order dismissing the execution application in limine is clearly unsustainable.

6. In view of the above the impugned order dated 28th September, 2017 is hereby quashed and set aside. The execution application being Regular Darkhast No. 56 of 2016 is restored to file.

7. The Writ Petition stands allowed.

[Sharmila U. Deshmukh, J.]