

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.3389 OF 2022**

(AVINASH NAMDEORAO PHAD..VS.. SHASHIKALA NAMDEORAO PHAD & OTH.)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Shri Tejas Deshpande, Advocate for Petitioner.  
Shri R.J.Shinde, Advocate for Respondent No.2.  
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**CORAM : ANIL S. KILOR, J.**  
**DATED : FEBRUARY 22, 2023.**

1. Heard.

2. In this writ petition, the order dated 07/03/2022 passed below Exh.24 by the Joint Civil Judge Senior Division, Amravati, allowing the application moved by the decree holder to send Precept to the Collector for effecting partition, is under challenge on the ground that before passing of the said order, on 25/01/2022 the Judgment Debtor No.1 raised objection to the execution proceedings and it was pointed out that the decree is not executable for the reasons stated in the objection.

3. It is submitted that without deciding the objection raised by the Judgment Debtor, the application Exh.24 was allowed. It is submitted that, it is like putting the cart before the horse. It is submitted that if the objection is allowed and if it is found that the decree is not

executable, the Court cannot send the precept to the Collector for effecting partition. It is therefore, submitted that it was obligatory on the part of the executing Court to decide the objection first before deciding the said application Exh.24.

4. The learned counsel for the petitioner therefore, prays for remand of the matter for decision on the objection-Exh.44.

5. The learned counsel for the respondent submits that the objection raised by the petitioner is just to delay the fruits of the decree and such objection is mala fide. He, therefore, prays for dismissal of the present petition.

6. In light of the rival contentions, I have perused the record and the impugned order.

7. There is no dispute that the objection raised by the petitioner to the execution on the ground that the decree is not executable, is pending and it is not yet decided. There is also no dispute that the said objection was filed on 25/01/2022, much before the impugned order dated 07/02/2022 was passed.

8. In the circumstances, the learned executing Court ought to have decided the objection first before

sending the precept to the Collector for effecting partition. However, the executing Court has not adopted the said procedure. In the circumstances, I find substance in the submission of the learned counsel for the petitioner that the present matter needs to be remanded back to the learned executing Court. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 07/03/2022 passed below Exh.24 by the Joint Civil Judge (Senior Division), Amravati in Special Darkhast No.18 of 2020 is hereby quashed and set aside.
- iii) The matter is remanded back to the executing Court and the Executing Court is directed to decide the objection Exh.44 filed by the Petitioner/Judgment Debtor with application Exh.24 filed by the Decree Holder, afresh, as expeditiously as possible and in any case within a period of eight weeks from today.

The writ petition is **disposed of** accordingly.  
No order as to costs.

**JUDGE**