

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

WRIT PETITION NO. 8426 OF 2019

Kaml Ramkrushna Nimbolkar and ors__ Vs. __Vidyut Mandal Tantric Kamgar
Sahakari Pat Sanstha and ors

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

Court's or Judge's orders

Mr. S.S.Khadse, Advocate for petitioner
Mr. A.H.Mishra. Advocate for respondent No.1

CORAM : AVINASH G. GHAROTE, J.
DATE : 23/03/2023

1] Heard Mr. Khadse, learned counsel for the petitioner and Mr. Mishra, learned counsel for the respondent no.1.

2] The petition questions the order dated 19.10.2019, passed by the executing Court, whereby the challenge raised to the tenability of the execution proceedings, on the ground that the award dated 05.09.2006 passed by the Co-Op. Court, Amravati, in ABN Case No. 1127/2003, was a nullity, as it was passed against a dead person, in spite of the respondent no.1 society having knowledge of the demise, has been rejected. (pg.22).

3] Mr. Mishra, learned counsel for the respondent No.1 submits that the respondent no.1 was not having any definite knowledge regarding the demise of the original defendant - Ramkrushna Nimbolkar and therefore, the impugned order cannot be assailed.

4] The communication dated 15.10.2005 (pg/18) which is not disputed by the respondent no.1, indicates that the respondent no.1 was aware of the demise of Ramkrushna Nimbolkar, prior to the date of the said communication. That being the position, the respondent no.1 was duty bound to bring this position to the knowledge of the Co-Op Court before passing of the award, on 5.9.2006, which has not been so done. This would clearly indicate that the award was against a dead person, whose demise even before passing of the award was to the knowledge of the Respondent no.1.

5] In view of this position, the application below Exh. 13 would not have been rejected by the learned trial Court. The impugned order therefore is quashed and set aside and the application below Exh.13 is allowed by holding that the award was

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passed against a dead person and therefore was a nullity and accordingly incapable of execution.

6] The petition is allowed in above terms.
No costs.

JUDGE

Rvjalit