



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 WRIT PETITION NO. 2113 OF 2015

**NAGNATH VISHVANATH @ VISHAMBARSINGH
RAJPUT
VERSUS
DHONDIBAI ARJUNSINGH RATHOD AND ANOTHER**

...
Advocate for the petitioner : Mr. S.P.Dhobale

...
CORAM : ARUN R. PEDNEKER, J.

DATE : 08.01.2024

P.C. :

1] The learned counsel for the petitioner submits that the proceedings under Section 54 of Civil Procedure Code are pending before the concerned Authority. By the impugned order, the Civil Court has held as under :

4] Now the point before the executing Court is that whether or not an application Exh.53 could be entertained by this Court. According to me, certainly not, because the grounds alleged in application Exh.53 were available for JD No.1 since the execution petition is filed. The execution petition is concluded in favour of DH No.1 & 2 and that itself has made it clear that the grounds taken by JD No.1 have been turned down by the executing Court.

5] That apart, now it is clear that execution is satisfied, there remains nothing with the executing Court. Now the only remedy is left with JD No.1 to file a civil suit in the competent Court of civil jurisdiction had he got any grievance against the order passed by this Court. There is a reason to hold that the JD No.1 has made this last and futile

attempt if the DH away from the very fruits of the decree by filing an application Exh.53. I do not find substance in the application Exh.53. Hence order.

ORDER

1 *An application Exh.53 is rejected.*

2] In the application filed at Exh.53, it is contended by the petitioner that the decree in favour of decree holder nos.1 and 2 be declared in-executable. The Executing Court has already held that the execution petition itself is concluded in favour of decree holder nos.1 and 2 and that ground taken by the decree holder has already been turned down by the Executing Court and execution is already satisfied and that nothing remains with the Executing Court and that remedy, if at all, is available with the judgment debtor to file suit in the competent court. Once the decree is already executed and fully satisfied, the application for declaration that the decree itself is in-executable, cannot be entertained by the Executing Court. Therefore, there is no reason to interfere with the order passed by the Executing Court, hence, the present Writ Petition is dismissed.

**[ARUN R. PEDNEKER]
JUDGE**