



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7667 OF 2024

MOHEMEDUDDIN BASHIRUDDIN DIED AHEDABEGUM MOHEMEDUDDIN
AND ANOTHER
VERSUS
MOHAMED ABDUL HADI MOHAMED SHAMSHUDDIN AND OTHERS

Mr. H. V. Tungar, Advocate for the petitioners
Mr. S. S. Kulkarni, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.

DATE : 24th JULY, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. Petitioners are judgment debtors in Regular Darkhast No. 35/2020. The said Darkhast is filed for execution of judgment and decree passed in Regular Civil Suit No. 94/1993 wherein the defendants were restrained by perpetual injunction from damaging suit bandh.
3. The judgment debtors appeared in the execution proceedings and opposed the execution. Objections were raised from time to time. The decree holder was also cross-examined by the judgment debtors. Judgment debtors thereafter close their evidence. It is after this an application was filed raising objection to the maintainability of the execution proceedings on the ground that the decree holder is not the

owner of the suit property and therefore he has no right to execute the decree. This application filed below Exhibit 30 came to be rejected with *suo moto* directions by the execution Court to add wife and son of the plaintiff/decreed holder as party to this execution proceedings. An amendment is carried out to that effect and wife and son of the plaintiff were added as decreed holder Nos.2 and 3 in the execution proceedings. After this amendment, application Exhibit 44 was moved by the judgment debtors seeking leave to file reply as well as to cross-examine the decreed holder on this point. This application rejected, hence this petition.

4. Learned counsel for the petitioners/judgment debtors submits that once a contention raised by the plaintiff/original decreed holder that the decree is assigned to his wife and son, in view of the provision of Order 21 Rule 16 of the Code of Civil Procedure, there has to be evidence to show such assignment. It is his submission that for this purpose minimum requirement for the judgment debtors is to cross-examine the decreed holder. He, therefore, seeks appropriate direction to permit cross-examination of the decreed holder.

5. Learned counsel for the respondents/decreed holder submits that all objections raised by the judgment debtors are rejected and it cannot be permitted to file applications one after another to obstruct

execution of decree. It is his submission that application Exhibit 30 filed by the judgment debtors was rejected, however, since the Execution Court has issued directions, the wife and son of the plaintiff/deGREE holder were added as a decree holder Nos. 2 and 3. It is his submission that since the decree holder was already cross-examined by judgment debtors and his evidence is closed, question of giving any opportunity to further cross-examine the decree holder does not arise. It is submitted that the decree is passed on 29/04/1994 and the same is yet to be executed in spite of lapse of number of years therefrom.

6. No doubt the judgment debtors have raised several objections including objection by filing Exhibit 30. Though the said application is rejected, learned Execution Court issued *suo moto* directions to join wife and son of decree holder as decree holders in this proceedings. Pursuant to this order amendment is carried out. This Court, therefore, finds substance in the contention of the learned counsel for the petitioners that once alleged assignees of decree are added as party to proceeding, in order to ascertain as to whether the assignment of the decree is in terms of Order 21 Rule 16 of the CPC, basic requirement would be that the original decree holder to be cross-examined on this aspect. No doubt the Darkhast is pending for last four years for execution, the subsequent events occurred of joining of decree

holder Nos.2 and 3 gives right to the judgment debtors to test the said assignment at least by cross-examining decree holder. Merely because at earlier point of time the evidence of judgment debtors was closed, they cannot be prevented from cross-examining the decree holder on this vital issue. Learned counsel for the petitioners makes candid statement that there would be only cross-examination of decree holder in this regard on this point and also evidence if any led by judgment debtors, the same would be restricted to the assignment of the decree in favour of decree holder Nos.2 and 3. In the circumstances impugned can not sustain and is set aside.

7. However, having regard to the fact that the execution is pending for four years decree is of 1994, entire exercise of cross-examination of decree holder and leading of evidence on above issues by judgment debtors, be completed within a period of one month. Petition is allowed in the above terms. Execution Court to permit judgment debtors to cross-examine decree holder and also to lead evidence. Their evidence be completed within a period of one month and for no reason thereafter. The execution proceedings are expedited to be concluded within a period of six (06) months in any case.

(R. M. JOSHI, J.)

ssp