



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 WRIT PETITION NO. 12340 OF 2024

NANDABAI PRATAPRAO BANGAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SPECIAL LAND ACQUISITION
OFFICER AND ANOTHER

Mr. Sachin S. Deshmukh h/f Mr. S. S. Jangada, Advocate for the
petitioners
Mr. S. N. Kendre, AGP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 18th NOVEMBER, 2024

PER COURT :-

1. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order dated 30th August, 2024 passed by Execution Court in R.D. (LAR) No. 14/2016.
3. The petitioners are LR's of the original decree holder who had initiated R.D. (LAR) No. 14/2016. There is no dispute about the fact that the said darkhast was initiated in time. Decree holder died, however, his LR's were not brought on record. In the light of this fact, the learned Execution Court by order dated 30th August, 2024 passed below Exhibit 1 dismissed the proceeding for want of steps. Incidentally on the same day, an application was moved vide Exhibit 95 by the petitioners to bring

themselves on record. This application also came to be rejected. Hence, this petition.

4. Learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in case of ***V. Uthirapathi Versus Ashrab Ali and Others, (1998) 3 Supreme Court Cases 148*** wherein in paragraph 10 to 12 and 26 is held thus:

"10. If during, the pendency of a regular execution proceeding filed on the basis of a decree or order of a Civil Court, the decree holder or the judgment debtor dies and his legal representatives are not brought on record within ninety days, can the Civil Court dismiss the execution petition as abated?"

11. Order 22 Rule 12 of the CPC reads as follows:

"Order 22 Rule 12: Application of order to execution proceedings'. Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order."

12. In other words the normal principle arising in a suit - before the decree is passed - that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, - is not applicable to cases of death of the decree holder or the judgment debtor in execution proceedings.

26. Here we have clarified further that if the execution petition was initially filed in time, (that is within the time limited for filing execution petition) it remains to be pending even if the legal representatives are not brought on record within 30 days. If the decree holder dies, the petition cannot be dismissed even for default, behind the back of his legal representatives. Again if the judgment debtor died and the decree holder does not bring the legal representative on record, the Court could fix reasonable time and if the legal representatives of the judgment debtor are not brought on record within the time granted by Court, the execution petition could be dismissed for default."

5. Thus it is his contention that there is no circumstances dismissal of execution the proceeding was contemplated for not bringing LR's of deceased decree holder in time.

6. Learned AGP opposed the petition.

7. The Hon'ble Supreme Court in no uncertain terms has held that the normal principles arising in the suit before the decree is passed that the representatives are to be brought on record within a particular period of time and if not the suit could abate is not applicable to the cases of death of decree holder or judgment debtor in execution proceeding. In view of the said binding dictum, the darkhast which was filed in time ought not to have been dismissed for want of steps to bribing LR's of deceased decree holder on record. In any case when an application was moved on the same day, it was obligatory on the part of the the learned Execution Court to allow the said application and to bring the petitioners on record in place of deceased decree holder.

8. Having regard to the above position of law as well as facts involved in this case, petition succeeds in terms of prayer clause 'A'.

9. Needless to say that R.D. (LAR) No. 14/2016 stands restored.

(R. M. JOSHI, J.)

ssp