



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5771 OF 2024

Dr John David Prabhakar

VERSUS

The State Of Maharashtra And Others

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Mr. N. B. Narwade, Advocate for the Petitioner

Mr. S. B. Pulkundwar, AGP for Respondents/State

Mr. G. B. Rajale, Advocate for Respondent Nos. 4/a, 5a
to 5c

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CORAM : R.M. JOSHI, J

DATE : JULY 22, 2024

PER COURT :

1. By consent of both sides, heard finally at
admission stage.

2. This Petition takes exception to order passed
by Exh. 747 in Special Darkhast No. 137/2004 whereby
application filed by the Petitioner to add himself as
party to the execution proceedings came to be rejected.

3. The facts as they appear on record can be
narrated in brief as under:

Respondents filed Special Civil Suit No.
426/1996 in respect of suit property bearing no. S. No.
104 against the Petitioner/Trust. It came to be decreed

on 28.08.2003 whereby Defendant No. 1 to 8 and 54 to 65 were ordered to handover possession of Survey No. 104/B consisting area of admeasuring 2H 66R situated at Savedi, Ahmednagar to the Plaintiff. This judgment and decree was challenged by filing first appeal unsuccessfully. Undisputedly, the decree has been upheld till Supreme Court. In order to execute the said decree, original Plaintiff/Decree holder filed Special Darkhast No. 137/2004. In the said Darkhast, application Exh. 747 came to be filed by the Petitioner claiming himself to be one of the trustees of the Trust and seeking intervention therefor. Since the application is rejected by the Execution Court, present Petition is filed.

4. Learned Counsel for the Petitioner has drawn attention of the Court to order dated 23.12.2014 passed by the learned Assistant Charity Commissioner whereby present Petitioner was appointed as one of the trustees of the trust. He, therefore, claims that he has interest in the trust. It is alleged that since the appointed trustees are not taking care of the interest of the trust and that he is also having relevant

document in his custody, he sought himself to be added party to the proceedings.

5. Learned Counsel for Respondent supported the impugned order and placed on record relevant orders passed by this Court dated 28.11.2019 in Writ Petition No. 11173/2019 whereby the application filed by the third party was rejected.

6. There cannot be any dispute about the fact that Special Civil Suit No. 427/1996 was filed against the trust and trustees. The suit is decreed by judgment dated 28.08.2003. This judgment has attained finality. In Special Darkhast No. 137/2004 the said decree is sought to be executed as there is a direction of handing over possession of the suit property to the decree holder. As far as the present Petitioner is concerned, even if it is accepted that he is one of the trustees of the trust, in that capacity it will not be open for him to oppose the execution proceedings as trust is already party as judgment debtor therein. Petitioner for the purpose of raising objection does not claim any independent right in respect of suit

property. As such, he is not necessary party much less his presence would be required for deciding execution proceedings. This Court, therefore, finds no perversity in the order passed by the Execution Court to cause interference therein, in exercise of writ jurisdiction.

7. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)

Malani