

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6904 OF 2023

Appaji Govind Majgaonkar (since deceased)
through legal heirs Shankar Appaji Majgaonkar
and Ors.

.. Petitioners

Versus

Krushna Ravji Bhoite (since deceased) through
Ganapati Krushna Bhoite and Ors.

.. Respondents

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- Mr. Anand S. Patil, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 21, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Patil, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 21.06.2024 and the Writ Petition.
- 4.** The impugned order dated 17.09.2022 challenged by the Decree Holders is passed below Exhibit-1 in Darkhast No.28 of 2011. The Decree Holders who are Petitioners remained absent when the matter was repeatedly called out on 17.09.2022. The learned Executing Court observed that Darkhast Application was pending since long and was pending unattended since long. It is next observed that despite directions passed on 05.08.2022 to take steps and Darkhast Application having been kept for hearing on 17.09.2022, since Decree

Holders were absent on that date, it was seen that no steps were taken by Decree Holders for progress of the matter. On this sole ground the impugned order rejecting Darkhast Application was passed.

5. *Prima faice*, Mr. Patil immediately has drawn my attention to the fact that pursuant to the direction given on 05.08.2022, steps were taken by Decree Holders to serve Respondent No.12 who is the Judgment Debtor. He would draw my attention to the Application for issuance of public notice against Respondent No. 12 dated 14.01.2020 which is appended at page No.42 of the Writ Petition. Hence steps to serve the Judgment-debtors was taken by the Decree Holders.

6. In view of the steps taken by the Decree Holders pursuant to direction given on 05.08.2022, the impugned order is not only harsh and arbitrary but severely prejudice the substantive rights of the Decree Holders.

7. Mr. Patil in his usual fairness would inform that notice has been issued to the Judgment-debtors. Considering the enormity of the situation and the fact that Decree Holders hold decree prior to the year 2011 and are prosecuting since the year 2011 and even notices are issued to Judgment-debtors, I am not inclined to hear the Judgment-debtors in such a matter as I am convinced that the impugned order is not sustainable.

8. The impugned order is therefore quashed and set aside

reviving Darkhast No.28 of 2011 before the learned Executing Court. Learned Executing Court shall take cognizance of this order. A server copy of this order shall be placed before Learned Executing Court. Learned Executing Court is directed to issue appropriate process in Darkhast No.28 of 2011 and take to its logical end.

9. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

Digitally
signed by
HARSHADA
HANUMANT
SAWANT
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