

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7064 OF 2017

Uday Shrikant Ghatge & Ors.	... Petitioners
V/s.	
Rajinder Sharma & Ors.	... Respondents

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Mr. Rahul P. Walvekar for petitioners.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 27, 2024

P.C.:

1. The Executing Court by the impugned order has rejected petitioners' request to lead evidence and the request for filing say to the execution application. According to the petitioners, they were not properly served as the publication of suit summons was not made in accordance with law. It is not in dispute that the petitioners have challenged the decree on merits by way of first appeal and the said proceeding is subject matter of SLP before the Apex Court where the Appellate Court has permitted both the parties to resort their dispute by way of mediation settlement process.

2. In so far as, the objection raised under Section 47 of the Code of Civil Procedure, 1908 is concerned, the enquiry as contemplated under Section 47 of CPC has limited scope. In view of the judgment of the Apex Court in the case of *Dhurandhar*

Prasad Singh Versus Jai Prakash University And Ors., 2001 (6) SCC 534, whereas the Apex Court has held the power of Executing Court while entertaining application under Section 47 is microscopic and limited to the extent of raising issues such as the decree became inexecutable, the decree is void or had been passed by the Court which lack inherent jurisdiction to entertain the suit.

3. The objection raised by the petitioner regarding service of summons cannot be considered by the Executing Court; hence, the impugned order does not suffer from legal infirmity. However, it shall be open for the parties to settle their dispute through mediation settlement process as permitted by the Apex Court. By keeping rights of the parties open to adopt process of mediation, the writ petition stands disposed of.

(AMIT BORKAR, J.)