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

WRIT PETITION NO. 11753 OF 2023

Bhaishankar Vitthaldas Mehta

.. Petitioner

Versus

Sunil Purushattam Khutale

.. Respondent

-
- Mr. Dilip Bodake, Advocate for Petitioner.

.....
CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2024.

P.C.:

- 1.** Heard Mr. Bodake, learned Advocate for Petitioner.
- 2.** The present Writ Petition takes exception to the order dated 04.02.2023 passed by the learned Executing Court in Application filed below Exhibit “69” in Regular Darkhast No.41 of 2013. Application is filed for appointment of Court Commissioner under Order XXVI of the Code of Civil Procedure, 1908 for identifying and/or identification of the Suit property which is decreed.
- 3.** At the outset, when such an Application is filed, it is the duty of the Judgment Debtor / Applicant to plead the facts correctly and also satisfy the learned Trial Court as to why such an Application is indeed filed. In the present case, after filing of the Application the Judgment Debtor has failed to prove to the satisfaction of the Court as to why such an Application is indeed filed. The ground for filing the

present Application is nothing but to protract and prolong the inevitable i.e. execution of the decree. A specious defence is taken by the Judgment Debtor while filing this Application that the Executing Court should now consider the fact that since 1983 the Judgment Debtor was in possession of the Suit property under a rental agreement. One of the two brothers whose names are mentioned in paragraph No.2 of the impugned order were the original owners of the Suit property and it is contended by the Judgment Debtor that one of the two owners had entered into some kind of an oral agreement in the year 1983 and put the Judgment Debtor in possession of the Suit property. Thereafter Judgment Debtor has contended that subsequently some time in the year 1996, he has obtained a Sale Deed from the original owner.

4. On the basis of these facts, the present Application is filed before the Executing Court and an attempt is made to pursue the Court to appoint a Court Commissioner to identify the property which is in possession of the Judgment Debtor. It is shocking and equally surprising that in all this the decree which has been passed by the learned Trial Court and which is in execution in the Regular Darkhast proceedings is given a complete go by. If such an Application is countenanced, the decree of the Trial Court will be rendered infructuous.

5. That apart, when such an Application is filed, the Applicant / Judgment Debtor has to prove it to the satisfaction of the Trial Court as to why such an Application should be considered. The learned Trial Court has after considering the Application and the submissions clearly opined that no purpose whatsoever shall be served if such an Application is allowed at this stage.

6. Application filed below Exhibit “69” is nothing but a sheer abuse of the process of law by a Judgment Debtor to prolong the execution of the decree. Such a course of action can never be countenanced by the Court nor it should be allowed.

7. It is seen that the Suit is filed in the year 2007 and it has been decreed in the year 2013 and thereafter for the last 11 years Regular Darkhast proceedings are pending for execution of the decree.

8. I find no reason to interfere with the impugned order dated 04.02.2023 in the facts of the present case. Application filed below Exhibit “69” is clearly not maintainable and deserves to be dismissed. The order dated 04.02.2023 is sustained and upheld.

9. The learned Executing Court is directed by this Court to proceed with the Regular Darkhast as expeditiously as possible in accordance with law.

10. With the above directions, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]