

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.474 OF 2024

Dadabhau Khandu Fulsundar (since deceased)
through his legal heirs Sopan Dadabhau Fulsundar and Ors. Petitioners
.. (Orig. Plaintiffs)

Versus

Ali Usman Pathan (since deceased) through legal heirs Bilak Ali Pathan and Ors. Respondents
.. (Orig. Defendants)

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• Mr. Vinayak Gadekar, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 16, 2024

P.C.:

- 1.** Heard Mr. Gadekar, learned Advocate for Petitioners.
- 2.** The present Writ Petition is filed on 14.08.2023 to challenge the common order dated 20.03.2017 which is at Exhibit-G, page No.111 of the Writ Petition.
- 3.** The impugned order came to be passed in eight different applications filed by eight different Judgment Debtors before the executing Court in Regular Darkhast proceedings.
- 4.** Facts are extremely serious in the present case. The original suit was filed in the year 1994 for seeking specific performance of an agreement between the parties. This suit was decreed by the Trial Court in 2006. Defendants filed statutory appeal which was dismissed by the Appellate Court in the year 2013. In order to execute the

decree, Plaintiffs who are Petitioners before me approached the Executing Court by filing Regular Darkhast No.16 of 2013. For the past more than one decade the stalemate still continues and it is infact aggravated by the impugned order.

5. Record shows that between the year 2013 to 2017, eight different Defendants filed identical Applications urging the Executing Court to frame issues once again under the provisions of Section 47 of the Civil Procedure Code, 1908 without furnishing any reasons whatsoever and by merely stating that Executing Court can go into the validity of the decree if it is nullity, if it without jurisdiction, if it is ambiguous, etc.

6. Without giving any cogent reasons for considering the above proposition in the facts and circumstances of the present case the impugned order dated 20.03.2017 came to be passed. *Prima facie* it is not sustainable at all. One opportunity is therefore given to the Defendants to remain present on the next date. The Executing Court does not stop here. It gives further directions to both the parties to lead fresh evidence once again without according any reasons.

7. An arguable case has been made out for issuance of notice and for stay of the impugned order dated 20.03.2017.

8. Hence, issue notice to Respondents. Petitioners are directed to serve the Respondents. Humdast permitted. In addition to Court's

notice, Petitioners are permitted to serve the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Writ Petition.

9. The impugned order dated 20.03.2017 is stayed. Proceedings before the Executing Court shall stand stayed in the meanwhile.

10. Stand over to 30th January, 2024.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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