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

WRIT PETITION NO. 474 OF 2024

Dadabhau Khandu Fulsunndar (Since deceased through his legal heirs) Sopan Dadabhau Fulsundar and Ors.	Petitioners .. (Orig. Plaintiffs)
Versus	
Ali Usman Pathan (Since deceased through legal heirs) Balak Ali Pathan and Ors.	Respondents .. (Orig. Defendants)

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- Mr. Vinayak B. Gadekar, Advocate i/by Jidnyasa P Rankar for
Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 24, 2024.

P.C.:

- 1.** Heard Mr. Gadekar, learned Advocate for Petitioners.
- 2.** After hearing Mr. Gadekar on 16.01.2024, this Court had
passed the following order:-

"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."

3. The above order has been served on Respondents. None appears for Respondents when the Writ Petition is called out. The impugned order dated 20.03.2017 is at page No.111 of the Writ Petition and as observed it is *sans* reasons whatsoever. It is clearly unsustainable in view of the above mentioned order passed by me.

4. The imprimatur of the learned Executing Court that validity of the decree can be challenged if it is nullity, if it is without jurisdiction, if it is ambiguous etc. is a perspective which is expressed and about which there is no issue. What is important is that when it makes such a sweeping observation whether those observations relate to the case in hand. That is not the case here. Two Courts namely, the Trial Court and the District Court have applied their mind and have passed reasoned judgments in respect of decreeing the Suit and upholding that decree. Thereafter the present Execution Application and frivolous / vexatious Interim Applications are filed by the 8 Judgment Debtors. All this is done only to protract and delay the inevitable and frustrate the decree.

5. The proposition stated by the learned Executing Court in the impugned order cannot be applied to the facts in the present case at all. No reasons are given at all. Hence impugned order is not sustainable. Applications filed below Exhibits '68', '69', '70', '75', '76', '77', '78' and '79' in Regular Darkhast No.16 of 2013 deserve to be dismissed.

6. In view of my above observations and the reasons given in the order dated 16.01.2024, the order dated 20.03.2017 is quashed and set aside.

7. Resultantly, Applications filed below Exhibits '68', '69', '70', '75', '76', '77', '78' and '79' in Regular Darkhast No.16 of 2013 are dismissed.

8. Learned Executing Court is directed by this Court to expedite the hearing of Regular Darkhast No.16 of 2013 without any further delay.

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

[MILIND N. JADHAV, J.]

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Date: 2024.09.24
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