



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5791/2023

(Vikram Bhalchandra Ghongade Vs. State of Maharashtra, through Collector,
Wardha and others)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Petitioner in person
Mrs. S.S. Jachak, Addl. G.P for Respondents / State

CORAM: BHARAT P. DESHPANDE, J.

DATED : 11th MARCH, 2024

Heard the petitioner in person as well as the learned Additional Government Pleader.

2. The order challenged in the present petition is dated 21/06/2023, passed in Regular Darkhast No.22/2022. By the impugned order, the learned Executing Court rejected the said execution proceedings on the ground that the decree passed by the learned first Appellate Court is final and binding on the parties and since the Second Appeal is already withdrawn, the prayer to the Executing Court passed by the learned trial Court cannot be entertained.

3. The petitioner would submit that the First Appeal was withdrawn since two appellants expired on 27/10/2006 and 20/09/2010. It shows that these parties expired before Regular Civil Appeal No. 140/2006 was decided. The petitioner would submit that the decision in RCA No. 140/2006 is a nullity and therefore, the order of the learned trial Court is

required to be executed.

4. The learned Additional Government Pleader pointed out that the learned trial Court's decree which was in favour of the plaintiff, was reversed by the learned first appellate Court thereafter and challenge was raised before this Court by filing Second Appeal No.205/2011. The said Second Appeal was withdrawn vide order dated 03/12/2012. Accordingly the decision passed by the learned First Appellate Court is now existing and binding on the parties.

5. The learned Executing Court in a detail reasoned order considered that the decree passed by the learned trial Court merged into the judgment and decree passed by the learned first Appellate Court and, therefore, the decree of the learned trial Court cannot be executed.

6. The contention of the petitioner that the decree of the learned first appellate Court is a nullity, cannot be entertained in execution proceedings since the Second Appeal filed by the appellants was withdrawn. The reasoning given by the learned Executing Court, cannot be followed with and accordingly, there is no substance in the present petition. Accordingly, the petition stands dismissed. No costs.

(BHARAT P. DESHPANDE, J.)