



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO. 5655 OF 2022

MANDA RAMDAS SONWANE THROUGH HER LRS RAMDAS RAGNATH
SONWANE
VERSUS
GRAMPANCHAYAT SUREGAON THROUGH THE OFFICER GRAMVIKAS
OFFICER AND ANOTHER

Mr. S. S. Kulkarni, Advocate for the petitioner
Mr. A. G. Ambetkar, Advocate for respondent no.1.

CORAM : R. M. JOSHI, J.
DATE 28th JANUARY, 2025

PER COURT :-

1. This petition takes exception to the order passed below Exhibit 57 in Regular Darkhast No. 5/2021 filed by Judgment Debtor i.e. original defendant in R.C.S. No. 211/2009.
2. Undisputedly the petitioner filed the above suit against defendant- Grampanchayat seeking declaration and injunction. The said suit is decreed by judgment and decree dated 21/04/2014. The said decree is not challenged by the defendants. Thus, the said decree has attained finality.
3. Alleging the breach of the order of injunction, petitioners/original plaintiffs filed proceeding being Regular Darkhast No. 5/2019. The respondents/original defendants appeared in the said

proceeding and filed application (Exhibit 17) raising objection to the maintainability of the execution proceeding. During the pendency of this application another application is moved being Exhibit 57. It is contended therein that the Trial Court has no jurisdiction to pass the decree in view of the provisions of the Maharashtra Village Panchayats Act. The learned Trial Court entertained the said application for the reason that application (Exhibit 17) filed by the defendants/ Judgment Debtor is pending for decision.

4. Learned counsel for the petitioner has raised objection to the manner in which the respondent Grampanchayat is filing application one after another before the execution proceeding and thereby causing delay in disposal thereof. It is his submission that in the first application no such application (Exhibit 17) no issue of maintainability of the suit before the Trial Court was raised and as such the same stood waived. He also argued that Trial Court has recorded findings that the defendant Grampanchayat has not followed to provisions of 53(2) of the Act and as such question of raising objection to the maintainability of suit does not arise.

5. Learned counsel for the respondent tried to support the impugned order by contending that subsequent to the judgment and decree passed by the Trial Court, the Grampanchayat has followed due

procedure of law as contemplated by the Maharashtra Village Panchayats Act and as such it for the petitioners- Decree Holder to take exception to the said order independently.

6. This Court is not expected to opine on the defences sought to be taken by the respondents before the Execution Court. It is for the Execution Court to take decision on Exhibit 17 has filed by the respondents herein. The question arises as to whether it is justified for the Execution Court to entertain application (Exhibit 57) regarding the maintainability of the suit itself. Record indicates that no objection was raised with regard to the maintainability of the suit by respondent/Grampanchayat. On the contrary there was admission about non compliance of the provisions of 53(2) of the Act while initiating the action on the basis of which the suit came to be filed. Since no issue was raised with regard to the maintainability of the suit before the Trial Court, question of permitting Judgment Debtor and raise the said issue at this stage does not arise.

7. In any case the Trial Court has recorded findings in paragraph no. 13 with regard to the provisions of 53(2) and 53(2A) of the Act. If the Judgment Debtor was aggrieved by the said findings, the said findings only could have been challenged by filing an appeal and not before the Execution Court. It is settled law that the Execution Court

cannot go behind the decree and cannot assume powers of the Appellate Court. As such no reason or justification to entertain Exhibit 57.

8. As a result of above discussion, Petition is allowed. Exhibit 57 stands dismissed. Execution Court is directed to decide the execution proceeding expeditiously and in any case within a period of three months from today.

(R. M. JOSHI, J.)

ssp