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921 WP-9870-2023

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 9870 OF 2023

Madhavi Alias Mahadevi Babruwan Jadhav

...Petitioner

VERSUS

The Collector Latur And Others

...Respondents

...

Mr. Tukaram Maruti Venjane, Advocate for the Petitioner.

Mr. K. N. Lokhande, AGP for Respondent-State.

Mr. R. S. Shinde, Advocate for Respondent No.4.

CORAM : KISHORE C. SANT, J.

DATE : 3rd JANUARY 2025.

PC :-

1. Heard the learned Advocate for the parties.
2. By consent of the parties, the petition is taken up for final disposal at the stage of admission.
3. The only grievance in this writ petition is that in the execution proceeding, the petitioner, who happens to be daughter of original judgment debtor Babruwan Jadhav, is not properly heard. The execution proceeding is filed in the year 2013. The judgment debtor died on 17th October 2017. In the execution, the present petitioner made a

representation to the Tahsildar raising an objections to the execution of decree. The main ground of objection is that, a decree cannot be executed against the dead person. The Tahsildar by an order dated 8th December 2021 decided the representation. In the order, he directed the Deputy Superintendent, Land Record, Nilanga to hand over the possession with the help of Circle Officer, Revenue. Against which the petitioner filed an appeal before the Sub-Divisional Officer. The SDO rejected the appeal by an order dated 18th September 2022. The petitioner approached the learned Collector against the said order. The learned Additional Collector, Latur rejected the appeal by an order dated 21st June 2023. Thus, all the orders are against the petitioner by the Revenue Authorities. The petitioner thereafter, approached the Executing Court. It is prayed that the precept is sent to the Collector of execution be called back. The execution proceeding be restored to its original position by adding the present petitioner as a party and thereafter, to proceed with the execution proceeding. In the said application, the petitioner filed an application for interim stay to the execution of the decree. The learned Executing Court by his detailed order rejected the

stay application. Now, the grievance of the petitioner is that, till the decision of the Misc. Application (NRJE) No.02 of 2023, the learned Executing Court ought to have granted stay to the execution proceeding.

4. The learned Advocate Mr. Venjane thus submits that atleast till the decision of the Misc. Application (NRJE) No.02 of 2023, it was necessary to grant the stay. The learned Executing Court has failed to appreciate this aspect. He thus prays for grant of stay to the execution proceeding pending Misc. Application (NRJE) No. 02 of 2023.

5. Learned Advocate for Respondent No.4 and learned AGP for State vehemently oppose the petition. They support the impugned order. They submit that now practically the entire execution is over except handing over the possession. Property is demarcated by metes and bounds. The Court has rightly observed that after the precept is sent to the Collector for execution proceeding, the executing Court becomes *functus officio*. There is no such provision of making such kind of application. The decree has attained finality. They prayed for dismissal of the writ petition.

6. After hearing the parties, what appears, in short is that, the petitioner wants that she should be heard being legal heir of deceased Babruwan Jadhav, original judgment debtor. The main argument appears that from the pleadings of the petitioner that no decree can be executed against the dead person. The Executing Court has already dealt with the proposition. A very submission or proposition is without any foundation of law. The learned Advocate for the petitioner relied upon Sections 47 and 50 of the Code of Civil Procedure, 1908, this Court finds that without any substance, the petitioner is now already before the executing Court. The Court can pass appropriate order on an application. For that purpose, this Court finds that, no interference is required by this Court in the impugned order. This Court does not find any merit in the writ petition. Hence, the following order:

ORDER

- (i) Writ Petition stands dismissed.
- (ii) No order as to costs.

[KISHORE C. SANT, J.]