



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6458 OF 2025

DAGDU TRIMBAK SAVANT

VERSUS

SUNANDA BALU ALIAS BALASAHEB SAVANT AND ANOTHER

...

Mr. Shelke Manoj Uttamrao, Advocate for the Petitioner

Mr. Kolpe Mahendra B., Advocate for Respondent No.1

Mr. Barate Annasaheb Rajendra , Advocate for Respondent No.2

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 18.07.2025

PER COURT :-

1. The petitioner impugns order dated 10.04.2025 passed by learned Civil Judge Senior Division, Osmanabad below Exhibit-50 in Special Darkhast No.325 of 2022.

2. Respondent No.1 has instituted WCA No.52 of 2014 under Section 10 of Employees' Compensation Act, 1923 against petitioner and respondent No.2. The learned Commissioner, after considering rival submissions, passed award directing petitioner and respondent No.2 to jointly and severally pay sum of Rs. 5,08,320/- (Rs. Five Lac Eight Thousand Three Hundred and Twenty only) along with interest at the rate of Rs.12 % per annum. The award passed by Commissioner has attained finality.

3. In pursuance of award, respondent No.1 initiated Special Darkhast No.325 of 2022 for recovery of awarded amount by way of

execution. Initially, petitioner raised objection below Exhibit-16 under section 97 of Code of Civil Procedure to declare award as null and void. However, learned Civil Judge Senior Division, Osmanabad, rejected objection vide order dated 04.05.2024.

4. At this stage, petitioner filed another application below Exhibit-50 praying that award passed may be split by individually fixing liability of each judgment debtor. It is stated that petitioner has already deposited Rs.2,00,000/- (Rs. Two Lac only) and even ready to deposit amount to the extent of his share; hence, apportionment of liability is sought. The learned Trial Court, after considering rival submissions, rejected application Exhibit-50 vide impugned order dated 10.04.2025..

5. Mr. Manoj Shelke, learned Advocate appearing for petitioner vehemently submits that respondent Nos.1 and 2, in collusion with each other, tried to execute entire decree solely against petitioner. Petitioner has already deposited Rs. 2,00,000/-, yet decree is sought to be executed against him.

6. Mr. Shelke, in support of his submissions relies upon observations of Hon'ble Supreme Court in case of ***J. Family of M. Das Vs. State Bank of Hyderabad reported in 1970 SCC (2) 766***, to contend that execution proceeding shall be taken up in fair manner and it cannot be instrument of oppression against any one of judgment debtors. According to

him, Executing Court could have split liability among judgment debtors equally and execute decree accordingly.

7. Per contra, Mr. M. B. Kolpe, learned Advocate appearing for respondent No.1 vehemently opposes petition and submits that very nature of award is joint and several and, therefore, prayers made by petitioner cannot be entertained.

8. Having considered submissions advanced, it can be observed that award has been passed by Commissioner under Employees' Compensation Act against petitioner and respondent No.2 holding them jointly and severally liable to pay compensation to respondent No.1/original petitioner. Admittedly, liability is not apportioned between them and same is made joint and several. The term joint and several connotes that each of respondent is liable to satisfy entire claim without segregation of liability.

9. It is trite that, in such cases, decree-holder is entitled to execute decree against any judgment debtor. In absence of apportionment of award, no claim can be made to split liability. It is not disputed before this Court that award passed by Commissioner has not been challenged on any ground and same has attained finality.

10. In that view of the matter, learned Executing Court is justified in refusing to entertain petitioner's prayers. However, fact remains that in case decree is fully executed against petitioner, excluding another judgment

debtor, he has his own remedies to recover amount from other joint judgment debtor. However, Executing Court cannot be put under obligation to split decree or decide liability among respondents by going behind decree which has attained finality.

11. In that view of the matter, writ petition stands **rejected**.

[S. G. CHAPALGAONKAR, J.]

HRJadhav