



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 WRIT PETITION NO. 12652 OF 2022

GANGUBAI KESHAVRAO MASKE AND OTHERS
VERSUS
GANESHRAO BAPURAO WAGH AND OTHERS

...
Mr. Mahesh P. Kale, Advocate for the Petitioners
Mr. N. N. Bhagwat, Advocate for Respondent No.2/1

CORAM : R. M. JOSHI, J.

DATE : 29th SEPTEMBER, 2025

P.C. :-

1. At the outset, Mr. Bhagwat, learned Counsel states that he has filed appearance on behalf of Respondent No.2/1.
2. In view of this statement, the appearance of Mr. S. P. Kausalye for Respondent No.2/1 stands discharged.
3. This Petition takes exception to the order dated 28/06/2011 passed by the Member Motor Accident Claim Tribunal, Parbhani in M.A.C.P. R.D. No. 10/2011 rejecting the execution proceeding on the ground that he is not pleaded by joining the LR's of deceased-judgment debtor that she inherited the property of judgment debtor
4. Learned Counsel for the Petitioners submits that this order came to be passed on the next date of filing of the Petition before the Execution Court and that no opportunity of hearing was given to the Petitioners. It is his further submission that if at all the Court was of the

view that there should be such pleadings, the Petitioner ought to have been given a chance to amend the Petition. It is his submission that in view of the dismissal of execution proceeding, he is debarred from executing the decree in his favour.

5. Learned Counsel for the Respondent opposed the Petition, however, there is no dispute about the fact that the contesting Respondent inherited the property from deceased judgment debtor.

6. Record indicates that execution proceeding was filed on 27/06/2011 and the same came to be dismissed on 28/06/2011. The order impugned does not indicate that the learned Counsel for the Petitioners was heard before passing of such order. Now there is material placed on record to indicate that the contesting Respondents has inherited the property of judgment debtor. As such, it was open for the Petitioners to join them as Respondents/judgment debtors in the execution proceedings.

7. Having regard to the peculiarity of the facts, impugned order deserves to be set aside and accordingly, set aside. Proceeding of execution bearing MACP R.D. No. 10/2011 stands restored. It is open for the Petitioners to move an Application for appropriate amendment to the Petition. The Execution Court to decide any such Application if filed in accordance with law.

8. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

ssp