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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1423 OF 2009

M/s. Avadhood Builders & Ors. .. Petitioners

Versus

Keshav Ganesh Chikhalikar & Ors. .. Respondents

None for the parties.

CORAM: ALOK ARADHE, CJ.

DATE: 14th JULY, 2025

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ORAL ORDER:

1. In this writ petition filed under Article 227 of the Constitution of India, the petitioners have challenged the order dated 21st July, 2001 and order dated 6th November, 2008 passed in Misc. Civil Application No. 183 of 2001 by the Civil Judge, Senior Division, Kolhapur.

2. Facts giving rise to filing of this writ petition, in nutshell, are that Regular Civil Suit No. 464 of 1980 was filed by the respondent no.1 against respondent nos.2 and 3. On 5th October, 1991, the aforesaid Civil Suit was partly decreed. Being aggrieved by the aforesaid judgment and decree, respondent nos. 2 and 3 have filed Regular Civil Appeal No. 301 of 1992. During the pendency of the appeal before the Appellate Court, on 25th June, 1995, the petitioners and respondent nos.1 to 3 have entered into an agreement for

construction of the suit wall along with property of respondent nos. 2 and 3 and it was agreed that all pending litigation would be withdrawn. As the agreement was not acted upon by respondents, Civil Appeal No. 301 of 1992 filed by respondent nos.2 and 3 was dismissed and cross-objections of respondent no.1 were allowed. Thereafter the respondent no.1 initiated execution proceeding. During the pendency of the execution proceeding, the petitioners filed an application under Section 47 of the Civil Procedure Code, 1908. The executing Court by impugned order dated 21st July, 2001 has rejected the aforesaid application by which the petitioners sought the direction to respondents to avail of the remedy of the arbitration. The executing Court thereafter by an order dated 6th November, 2008 rejected the application preferred by the petitioners raising objection of executability of decree. Hence, this writ petition.

3. I have carefully perused the record. The executing Court while passing the impugned orders ought to have appreciated that the parties had settled the dispute amongst themselves which was apparent from the agreement dated 25th June, 1995. Under the said agreement, the respondent nos.1 to 3 had waived all the rights accrued by them under decree dated 5th October, 1991 passed in RCS No.464 of 1980. It ought to have been appreciated that there was an arbitration clause which governs the relationship between the parties and in case of a dispute, the parties ought to have been relegated to the remedy of arbitration.

4. For the aforementioned reasons, it is evident that the impugned order suffers from error apparent on the face of the

record. The impugned order is accordingly set aside. In the result, the writ petition is allowed.

5. Let a copy of this order be communicated to the trial court.

(CHIEF JUSTICE)