

ORDER BELOW EXH.53 in MCA No.104/2013

1] Perused the application filed by the legal heirs of decree holder praying that the opponent Nos.1 to 5 be committed to Civil Prison under O.21 R.37 of C. P. C. on the grounds that the non applicants are about to leave the jurisdiction of this Court and and going to reside outside. If the opponents succeeds to reside out of the jurisdiction of this Court, the decretal amount cannot be recovered and in that situation the applicants will suffer irreparable loss.

2] The application has been challenged by the opponent No.1 by filing his written-say at Exh.55 wherein he contended that the present application is for the inquiry of mense profit under O.20 R.12(c) of the C. P. C. and that at present none of the opponent is directed to deposit any of the sum. So also he has filed Second Appeal before the Hon'ble Bombay High Court Bench at Aurangabad. Thus the original decree is not yet final. Therefore, the present application is not maintainable and hence it be rejected.

3] Heard both the Ld. Counsels at length and also gone through the record and proceeding.

4] On perusal of Exh.1 it reveals that the present application is under O.20 R.12(c) of the C. P. C. for inquiry of mense profit. Even there is no amount at present is due as per the decree passed in Spl. C. S. No.24/1985. The present petition is not for execution of the decree passed in the above suit as yet there is no final decree. At the same time it is the admitted fact that there is Second Appeal filed by the opponent No.1 before the Hon'ble High Court Bench at Aurangabad bearing Second Appeal No.233/2007 which is pending and subjudice.

5] The provisions of O.21 R.37 of C. P. C. will come in picture only when there is an execution for recovery of any decretal amount and that if it is proved that the J. D. have failed to deposit the decretal amount in-spite of having sufficient mense to pay. But, that is not the stage in this proceeding nor it is the execution petition. On this ground also the present application is devoid of merit.

For the reasons discussed above the application deserves to be dismissed and hence the following order.

:: O R D E R ::

The application stands dismissed.

Majalgaon
Dt.09-02-2017

Sd/-
[S. R. Fakir]
Civil Judge Senior Division,
Majalgaon.