


MHNG180005072011 	<p style="text-align: center;"><b><u>Regular Darkhast No. 10/2013</u></b> <b>Narendra Vs. Daulat</b></p> <p style="text-align: center;"><b><u>ORDER BELOW EXH. 1</u></b> <b>(19<sup>th</sup> October, 2023)</b></p>
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Today, Advocate of the decree holder appeared before the court and submitted that, he has filed draft of sale deed below Exh. 63, but till today Judgment debtor has not filed his say on the draft on sale deed. Thereafter, J.D. was appeared before the court and filed documents below Exh. 67 and submitted that he has filed Second Appeal in the Hon'ble High Court. But, till today no any order passed by the Hon'ble High Court. Therefore, direction kindly be given to the Assistant Registrar, Kalmeshwar to execute sale deed in favour of decree holder.

2. J.D. and and their Advocates are absent. I have gone through record, it appears that, this R.D. has been filed in 2013. The decree holder has filed draft of sale deed below Exh. 63, but J.D. has not filed their say till today. Meanwhile, Advocate of the J.D. appeared before the court and submitted that they have filed Second Appeal before the Hon'ble High Court Bombay, Bench Nagpur and filed some relating documents below Exh. 67. As per the documents it is clear that they have filed Appeal before the Hon'ble High Court Bombay, Bench Nagpur with application of delay of condonation. Thereafter, matter kept on 20.09.2023. On that day Advocate of the J.D. appeared before the court and filed pursis below the Exh. 73 and submitted that appeal has been

listed on 30.09.2023 before the Hon'ble High Court. Thereafter, matter kept on 27.09.2023, 07.10.2023 and 18.10.2023, but J.D. has not filed any application or any information about their appeal. Therefore, sufficient time has been given to the J.D., but J.D. has failed. Also J.D. has failed to show what happened in the appeal after 30.09.2023.

3. The Ld. Advocate of the decree holder has relied on the citation of **Hon'ble Supreme Court of India in case Atmaram Properties Ltd. Vs. Federal Motors Pvt. Ltd. 2004 Law Suit (SC1495)**. As per the ratio of Hon'ble Supreme Court that mere preparing of an appeal does not operate as stay on the decree a order appealed against nor on the proceedings in the court of below. Therefore, this citation is applicable in this matter. Therefore, I am proceeding further.

4. In this matter J.D. has not filed say below the draft filed by the decree holder. Court has given sufficient time, but he has failed. Therefore, matter is proceeding without his say. I have gone through the this matter, it appears that Spl. Civil No. 71/2004 was filed by the decree holder against the J.D. Daulatrao Nitnaware for Specific Performance of Contract and decree was passed in the favour of the decree holder to execute the sale deed in the favour of the decree holder within the 3 months. If, defendant/ J.D. do deliver the possession of the suit property to the plaintiff/ decree holder on the execution of the sale deed, failing which, the plaintiff/ decree holder may get it executed through the court. Therefore, the decree holder has filed this

Regular Darkhast. But, J.D. failed to perform his part to execute the sale deed in the favour of the decree holder. Therefore, executing court can not go behind the decree. Also, no say filed by the J.D. about the contents of the draft of sale deed. Therefore, decree holder can not denied that to receive fruit of the decree. Already 10 years has been completed of this Regular Darkhast. Hence, I pass the following order.

**ORDER**

Mr. Ajay Jambhular, Assistant Superintendent of this court is hereby appointed for execution of sale deed on behalf of the J.D. on presentation of necessary stamp papers as provided as per rule. The decree holder shall deposit amount towards remuneration of court officer as per rule, it is hereby further directed under Order XXI, Rule 34(6) to Assistant Superintendent of this court to get the sale deed registered in accordance with law within 15 days from date of this order.

**Date: 19.10.2023**  
**Kalmeshwar**

**( R. L. Rathod )**  
**Jt. Civil Judge, (Jr. Dn.)**  
**Kalmeshwar.**

**CERTIFICATE**

I affirm that the contents of this PDF file order are same word to word, as per the original Order.

Name of the Stenographer           :-       R.S. Daware (Gr. III)