

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2159 OF 2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.Ajay Subash Patil for the petitioner

CORAM : K. K. TATED, J.

DATE : JULY 28, 2016

P.C.:

- 1 Heard the learned counsel for the petitioner.
- 2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff challenges the order dated 10.10.2014 passed by 3rd Joint Civil Judge, Senior Division, Thane below Exhibit-31 in Special Darkhast No.3 of 2012 allowing judgment debtor's application to raise questions as to the executability, discharge and satisfaction of the decree under execution.
- 3 The Trial Court by impugned order framed following issues:
 - a) Whether decree under execution is in contravention of various provisions of BT & AL

Act?

b) Whether decree under execution is violative of the joint/coparcenary ownership right of the objectionist or person claiming through them and therefore not executable?

c) Whether aforesaid objections are tenable at this stage?

4 The learned counsel for the petitioner submits that in Special Civil Suit No.652 of 1995 defendant nos.3, 5 and 6 by filing written statement at Exhibit-19, 20 and 21 respectively admitted claim of the plaintiff. In spite of that defendant no.6 filed application below Exhibit-31 in Special Darkhast No.3 of 2012 raising several objections.

5 The learned counsel for the petitioner makes a statement that petitioner is not claiming any relief against respondent nos.1 to 5 and 7. He submits that notice of the present Writ Petition be issued only to respondent no.6.

6 Considering the submissions made by the learned counsel for the petitioner and the impugned order passed by Trial Court, I am satisfied that the petitioner has made out a case for following order:

a) Office is directed to issue notice before admission to the respondent no.6, returnable after 8 weeks.

b) In addition to usual mode of service, petitioner is permitted to serve Respondent no.6 along with entire proceedings by private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect.

c) The petitioner is directed to remove all office objections within four weeks from today, failing which the Writ Petition shall stand dismissed without further reference to the court.

JUDGE