

Ramchandra Punjaram Ahirrao	...	Petitioner
Vs.		
Nanaji Punjaram Ahirrao (decd) through heirs		
Kavita N. Ahirrao and ors.	...	Respondents

Mr. Milind M. Sathaye for Petitioner.
Mr. P. B. Shah a/w. Mr. Mahesh Rawool for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 14TH AUGUST, 2015

Heard Mr. Sathaye, learned Counsel for the petitioner and Mr. Rawool, learned Counsel for respondents at length.

3. In support of this Petition, Mr. Sathaye submitted that on 07.11.2008, for the first time, the attachment order was passed. However, respondent No.1, hereinafter referred to as decree-holder, did not apply for sale as contemplated by sub-rule (4) of Rule 32 of Order XXI of the Code of Civil Procedure, 1908 within six months from the date of attachment and therefore, the attachment ceases to operate. He further submitted by order dated 27.01.2010, decree-holder was permitted to apply for fresh attachment or to apply for any other relief in the pending execution proceedings. Mr. Sathaye submitted that decree-

holder did not apply for fresh attachment or for any other relief in the Darkhast proceedings. In short, he submitted that in view of Order XXI, Rule 32(4) of C.P.C., ads decree-holder did not apply for sale within 6 months from the date of the attachment, the attachment ceases to operate.

4. The matter was heard at length on 22.06.2015. At the request of Mr. Shah, hearing of this Petition was deferred so as to enable him to obtain instructions as to whether as per the order dated 27.01.2010, decree-holder had applied for fresh attachment or has filed any application for any other relief in the pending execution application.

5. Mr. Shah states that the decree-holder has not applied for fresh attachment or has not applied for any other relief in the execution proceedings. Order XXI, Rule 32 reads thus,

“ORDER XXI
Execution of Decrees and Orders

32. Decree for specific performance for restitution of conjugal rights, or for an injunction.-

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it he decree may be enforced the case of decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or with the leave of the court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold; and out of the

proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.

[Explanation.—For the removal of doubts, it is hereby declared that the expression “the act required to be done” covers prohibitory as well as mandatory injunction.]”

6. Perusal of sub-rule (4) thereof shows that where at the end of 6 months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease. In the present case, admittedly, decree-holder did not apply for sale of Gat No.848 within 6 months. In view thereof, the attachment has ceased to operate. The impugned order, therefore, cannot be sustained and as such is liable to be set aside. Hence, Rule is made absolute in terms of prayer clause (b) with no order as to costs.

(R. G. KETKAR, J.)