

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7728 OF 2015**

Girish Pandurang Gangji

..Petitioner

Vs.

Shrivallabha Radhakisan Karwa

..Respondent

Mr. Samir Kumbhakoni for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 1st SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 6-4-2015 passed by the Learned 5th Joint Civil Judge Senior Division, Solapur, by which order the application Exhibit 13 for attachment before Judgment under Order XXXVIII Rule 5, came to be allowed and the property mentioned in the schedule of the said application Exhibit 13, came to be resultantly attached.

2 The Suit in question has been filed by the Respondent / Defendant for the recovery of an amount of Rs.29,65,000/- which amount is the total amount advanced by the Plaintiff as loan to the Petitioner/ Defendant. It is the case of the Plaintiff i.e. the Respondent herein that the cheque issued by the Petitioner / Defendant in satisfaction of the repayment of the said loan drawn on Siddheshwar Sahakari Bank Ltd. was dishonoured resulting in the

Respondent filing the Suit in question being Special Civil Suit No.320 of 2011 for recovery of the said amount. It seems that the Respondent has also filed a complaint under Section 138 of the Negotiable Instruments Act. The instant application Exhibit 13 has been founded on the fact that the Petitioner/Defendant is liquidating his properties and therefore the Respondent / Plaintiff sought attachment of the properties which is mentioned in the schedule to the said application. The Respondent has mentioned the incident where the Petitioner has sold the property i.e. a bungalow bearing Municipal No.158 Railway Lines, Opposite Pankhabavadi which was sold by the Petitioner pending the Suit. The Trial Court on the ground that the Plaintiff's interest would have to be protected pending the Suit having regard to the fact that the apprehension expressed by the Plaintiff seems to be bonafide in view of the alienation made by the Petitioner pending the Suit, deemed it appropriate to allow the instant application filed under Order XXXVIII Rule 5 of the Civil Procedure Code.

3 In my view, having regard to the reasons mentioned in the impugned order, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. However, the hearing of the Suit is expedited.

[R.M.SAVANT, J]