

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2406 OF 2012

Uma Shashi Dass w/o Kanta Prasad Dass Vs. M/s Ashirwad Builders & Ors.

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 Office Notes, Office Memoranda of Coram,
 appearances, Court orders or directions
 and Registrar's orders

Court's or Judge's Order

.....
 Shri Khare Adv for petitioner.
 Shri Y.U.Nayyar Adv for respondents 3 to 6.
 Shri S. S. Sanyal Adv for respondent 7.

CORAM: A. S. CHANDURKAR J.

DATED: JUNE 08, 2015.

By this petition the petitioner challenges the order dated 13.12.2005 passed on the application for attaching the immovable property of judgment debtor no. 2 as well as the order dated 21.03.2007 passed below Ex. 33 rejecting the application for review of aforesaid order.

By award dated 31.06.2001 the Arbitrator directed the respondent no.2 therein M/s Shelters to pay an amount of Rs. 3,90,500/- with 16% interest to the present petitioner. Said award was sought to be executed by the petitioner by filing Special Darkhast No. 37 of 2002. In said proceedings an application for attachment of immovable property of M/s Shelter was filed. The executing Court by order dated 13.12.2005 held that the property sought to be attached belonged to judgment debtor nos. 1 and 3 and as their names were deleted no relief could be granted in said application. The application came to be rejected. Petitioner sought review of aforesaid order but the executing Court rejected said application holding that no case for review had

been made out.

The record of the present proceedings indicates that though the attachment of immovable property of judgment debtor no. 2 was sought, the name of said judgment debtor no. 2 came to be deleted at the risk of the petitioner vide order dated 14.02.2013. The effect is that while the names of judgment debtor nos. 1 and 3 were deleted before the executing Court, the name of judgment debtor no. 2 who was respondent no.2 herein also came to be deleted. The effect thereby is that the names of all the judgment debtors stand deleted from the proceedings. In view of aforesaid, adjudication on merits of the impugned orders dated 13.12.2005 and 21.03.2007 is not possible. It is also to be noted that the aforesaid orders have been challenged in the present petition that was filed on 07.05.2012 which is almost after five years from the passing of the order dated 21.03.2007. In this background I am not inclined to exercise jurisdiction under Article 227 of the Constitution of India. The petition therefore stands dismissed. This shall however not preclude the petitioner from taking such steps as are permissible in law for executing the award dated 31.08.2001.

JUDGE

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