

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

WRIT PETITION NO.7682/2016

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. Rajiv Talsikar for the petitioner

CORAM : K. K. TATED, J.

DATE : JULY 12, 2016

P.C.:

1. Mentioned. Not on board. At the request of learned counsel for the petitioner, the matter is taken on board for urgent orders.

2. By this petition under Article 227 of the Constitution of India, the petitioner defendant guarantor challenges order dated 08.06.2016 passed by the Civil Judge, Junior Division, Miraj issuing arrest warrant against the petitioner.

3. The learned counsel for the petitioner submits that the trial court, without following due process of law issued arrest warrant. Hence, it is liable to be set aside.

4. It is to be noted that, in the present proceedings the respondent plaintiff made application below exhibit 11 under Order XXI Rule 37 and 38 of the Code of Civil Procedure, 1908 stating that they have to recover sum of Rs.69,077/- and interest thereon. In support of this contention, they have filed an affidavit of their Secretary Shri Ramchandra Keshav Joshi dated 11.12.2008 stating that the Bailiff made several attempts for executing the decree but the defendant failed and neglected to satisfy the decree. To that application below exhibit 1, the petitioner filed reply after 8 years i.e. on 17.03.2016 stating that the principal borrower has a valuable property being CTS No.5076/A/B/C having value of more than Rs.5 lacs. Considering these facts, the trial court passed the impugned order allowing the decree holder's application under Order XXI Rule 37 and 38 of the Code of Civil Procedure, 1908 i.e. issued warrant of arrest.

5. The learned counsel for the petitioner submits that the impugned order passed by the trial court is against justice, equity and good conscience and same is liable to be set aside. He submits that before issuing arrest warrant, the trial court is required to record the evidence of both the

parties. He submits that in the present proceedings the trial court has not recorded any evidence and directly issued arrest warrant. In support of this contention, he relies on the judgment in the matter of ***Pundlik Mahadu Nazire Vs. Maharashtra State Farming Corporation 1991 (0) ALJ MH 117828 (para 6)***. On the basis of this judgment, the learned counsel for the petitioner submits that the impugned order passed by the trial court be set aside.

6. Heard the learned counsel for the petitioner. It is to be noted that, in the present proceedings the respondent plaintiff made application under Order XXI Rule 37 and 38 of the Code of Civil Procedure, 1908 on 11.12.2008 stating that the Bailiff tried to execute the decree against the defendant but they avoided the same. To that effect the petitioner filed reply after 8 years i.e. on 17.03.2016 raising preliminary objection. It is to be noted that, the trial court, considering the affidavit filed by the plaintiff dated 11.12.2008 and issued arrest warrant against the defendants. There is no dispute that the plaintiff has to recover more than Rs.70,000/- from the defendants and they are avoiding the execution.

7. The judgment in the matter of ***Pundlik Mahadu Nazire*** (supra) is not applicable to the case in hand. The trial court has passed the impugned order after considering the affidavit of plaintiff dated 11.12.2008 and the bailiff's report.

8. Considering these facts, I do not find any substance in the Writ Petition. Same stands rejected.

JUDGE