

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 WRIT PETITION NO. 8834 OF 2014

MAHESH UTTAMRAO INGALE
VERSUS
MAHARASHTRA AGRO INDUSTRIES DEVELOPMENT
CORPORATION LTD, MUMBAI AND REGIONAL OFFICE

...
Advocate for Petitioner : Mr. Navandar Mehul Vikas

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 18th DECEMBER, 2017.**

PER COURT:-

1. The petitioner is aggrieved by the order dated 30.07.2014, by which an arrest warrant has been issued by the executing Court in Special Darkhast No.82/2007.
2. Despite service of Court notice on the Respondents, none appeared on 12.12.2017. Even today, nobody appears for the Respondent.
3. While granting ad-interim protection in terms of prayer clause (c), this Court has directed the Petitioner to deposit Rs.10,000/- before the executing Court. It is stated that, the amount has been deposited.
4. Learned counsel for the Petitioner has strenuously criticized the impugned order on the following grounds:

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- a) Proper show cause notice was not issued.
- b) Proper opportunity of hearing was not given.
- c) It was not inquired into whether the petitioner has any financial reserves or movable or immovable property for satisfying the judgment and decree.
- d) Merely because the decree holder prayed for issuance of arrest warrant, that the executing Court has passed the impugned order.
- e) No inquiry is conducted whether the judgment-debtor has the capacity to satisfy the judgment and decree.
- f) Order 21 Rule 38 has not been strictly complied with.

5. Learned counsel for the Petitioner relies upon the following three Judgments:

- 1. Ramasamy Vs. Pushpa, CRP (PD) No.3747/2011 and MP No.1/2011, judgment dated 13.03.2017, Madhras High Court.
- 2. Arumugham Vs. Muthukumaraswami, CRP (NPD) No.3570/2013, judgment dated 06.01.2014.
- 3. M.V. Raju Vs. Manager, Indian Overseas Bank, reported in AIR 2006-ker-379

6. I have gone through the petition paper-book and have scrutinized the impugned order in the light of the submissions made by the Petitioner and the judgment cited.

7. It is obvious from the impugned order that, a show cause notice was issued to the Petitioner on the application Exhibit – 22 filed by the decree holder seeking issuance of warrant for arrest under Order XXI Rule 38 of the Civil Procedure Code. The Petitioner has raised a proper objection, while opposing Exhibit-22. Evidence was led by the decree holder as well as by the Petitioner below Exhibits- 40, 48 and 52 in the Darkhast proceedings. It clearly indicates that, the Petitioner has attempted to mislead the Court by contending that no opportunity of hearing was given or that there was no occasion for him to properly oppose the application for issuance of warrant.

8. Learned counsel for the Petitioner has further contended that, though the Petitioner has a share in the immovable ancestral property, he had relinquished the said share to the other claimants and in return he had been paid a substantial amount of money which he had invested in a shop for operating a business. The business run into trouble and the shop was eventually closed. In that backdrop, he neither has the money to satisfy the decree, nor does he have any immovable or movable property which can be attached for satisfying the judgment and decree.

9. I find from the entire petition that, there are no pleadings about the relinquishment of the claim by the Petitioner and that

he had received amount from other claimants in return of such relinquishment. Nevertheless, this ground was taken up by the Petitioner before the executing Court. Though, the litigating sides had been granted the opportunity of leading oral and documentary evidence, the Petitioner judgment-Debtor did not divulge the details of the share that he had in the ancestral property situated at village Hadgaon. He also did not produce on record any relinquishment deed or the agreement or contract with the other claimants by which he had permanently handed over his share in return of consideration. The 7/12 extract after the purported relinquishment was not placed on record. No copy of the mutation entry pursuant to such relinquishment was placed on record. In short, the trial Court had no material before it which it could appreciate and conclude that, the Judgment-Debtor had no property of any nature to satisfy the judgment and decree.

10. Considering the manner in which the trial Court has properly considered Exhibit-22, and taking into account that the Petitioner was given every opportunity to lead oral and documentary evidence, I do not find that, the impugned order could be termed as being perverse or erroneous. None of the judgments cited by the Petitioner would be of any assistance keeping in view that, the Petitioner has shrewdly evaded bringing the concerned record before the trial Court and has held back that material record and information. The Petitioner expects that,

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this Court should accept a bald statement made without proper pleadings in the memo of the writ petition and without placing on record any document in support of this contention.

11. Considering the above, the Writ Petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

Sameer/Nov-17