

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABA

WRIT PETITION NO. 1525 OF 2016

1. Punamchand Bhallaji Jain (DIED)

Through legal representatives:

1/a Javarilal S/o Punamchand Jain, age 60 years

1/b. Kantilal S/o Punamchand Jain, age 54 years

1/c. Ashok S/o Punamchand Jain, age 52 years

1/d. Manoj S/o Punamchand Jain, age 45 years

All business by occupation and
R/o Sadar Bazaar, Chalisgaon
Taluka Chalisgaon District Jalgaon.

1/e. Panabai W/o Kantilal Kothari,
age 58 years occupation household
R/o Balaji Jewelers, Main road, Shirpur
Taluka Shirpur Dist. Dhule.

1/f. Manabai W/o Parasmal Lalwani,
age 56 years occupation household
R/o N-2, CIDCO, Aurangabad Tal. and Dist. Aurangabad

2. Bhavrilal S/o Ukhchand Jain,
age 62 years occupation business
R/o Sadar Bazaar, Chalisgaon Tal. Chalisgaon Dist. Jalgaon.

...PETITIONERS

(Orig. applicants)

VERSUS

1. Motilal Savaiji Jain (DIED)
Through legal representatives
- 1/a. Smt. Champabai Motilal Jain (DIED) L.Rs.
- 1/b. Sayarchand Motilal Jain,
age 66 years occupation business
R/o Bullion Merchant, Rath Galli,
Chalisgaon Taluka Chalisgaon Dist. Jalgaon.
- 1/c Tarachand Motilal Jain,
age 64 years occupation business
R/o 6, Suhrud, Ramdas Nagar, Canada Corner,
near Maruti Charwala at/post Nashik City, Nashik.
- 1/d. Subhash Motilal Jain,
age 59 years occupation business
R/o Parshva Padmavati Jewellers,
Sadar Bazaar, Chalisgaon Dist. Jalgaon
- 1/e. Prakash Motilal Jain,
age 55 years occup. Business
R/o Moti Deep Jewellers, Rath Galli, Chalisgaon Dist. Jalgaon
- 1/f. Smt. Shantabai Pukhraj Shaha,
age 69 years occupation household
C/o Kanmal Pukhraj Shaha, "Kavya' B.D. Road,
at post Chitradurga Tal. and Dist. Chitradurga – 511501
(Karnataka State)

1/g. Mohanbai W/o Jaswantraaj Jain (DIED) L..Rs.:

1/g/1. Aaprit Jaswantraaj Jain,

age 25 years occup. Business

R/o New Post Office road,

A/p. Taluka and Dist. Chitradurga – 511501 (Karnataka State)

1/g/2. Anita Prakashchandji Jain,

age 45 years occupation household

R/o C/o Diamond Plastic Door No.2nd,

11/42/102, Ramgopal Street, Vijaywada-1, (Andhra Pradesh)

1/g/3. Sunita Sureshji Jain,

age years occupation household

R/o U. Sureshji, 21, 2nd Floor, Inder, Sukh Nivas,

Rajanna Lane, Ganigar Peth, Bangalore-2 (Karnataka State)

1/g/4. Babita Ashokji Jain (DIED), L.Rs.:

1/g/4/a. Ashokkumar Prakash Jain,

age 50 years occupation business

R/o Rajendra Towers No. 13,

Samudra Mudli Street, Sowcarpet, Chennai – 600 003

1/g/4/b. Bhavika D/o Ashokkumar Jain,

age 25 years occupation household

R/o as above.

1/g/4/c. Abhishek S/o Ashokkumar Jain,

age 20 years occupation education R/o as above.

1/g/5. Kavita Mahavirji Jain,
age 39 years occupation household
R/o C/o Ambika Enterprises, Alibag Street, opp. Super Bazaar,
Governor Peth, Vijaywada -2 - 522002 (Tamil Nadu)

1/g/6. Nikita Vijayrajji Jain,
age 35 years occupation household
R/o C/o Mahendra Traders, 237, 4th Main Road,
Chamraj Peth, Bangalore-18

1/h. Chandrakalabai W/o Sureshchandra Jain,
age 59 years occupation household
C/o Hukumchand Rajmal Jain, Gandhi Chowk,
at post Khirkiya Dist. Hoshangabad (M.P.).

...RESPONDENTS

Mr S.P. Bramhe, Advocate for petitioners.

Mr K.P. Chaware, Advocate for respondents No. 1(B), (D) to (F)
and G(2), G(3), G(5) and G(6)

CORAM : NITIN W. SAMBRE, J.

DATE :3rd October, 2017

ORAL ORDER :

Shri Bramhe, learned Counsel for the petitioners, submits
that in compliance with the earlier Order passed by this Court on 20th
September 2017, an amount of Rs. 2,27,000/- (Rs. Two lacs twenty

seven thousand only) is already deposited and balance amount of Rs. 750/- (Rs. Seven hundred fifty only) will be deposited within one week from today. The statement is accepted.

2. In the present proceedings, the petitioner is a judgment debtor in Special Civil Suit No. 101 of 1979, whereas, respondents are legal representatives of decree holder.

3. In the said proceedings, the respondents moved an application under Order XXI Rule 46 of the Civil Procedure Code before the Court of Civil Judge (Senior Division), Jalgaon in said civil suit. Respondents/decreed holders before the suit came to be decided pursuant to an application, got an order in their favour under the provisions of Order XXXVIII Rules 1 & 2.

4. It is their claim that by virtue of said order, the following properties were attached, vide order of attachment before judgment:

Sr. No.	Name of the owner	Property details	Charge created for an amount of Rs.
1	Tejraj Pratapchand Jain	Gat No. 22 situated at Mouje Hisale Tal. Shirpur	75,000/-
2	Tejraj Pratapchand Jain	Gat No. 161 situated at Tardi Tal. Shirpur	
3	Tejraj Pratapchand Jain	Gat No. 106 situated at Tonde Tal. Shirpur	

5. In addition to above three properties, area 210.7 square meters out of City Survey No., 397 situated at Chalisgaon was also attached.

6. Suit of the respondent/plaintiff came to be decreed by judgment and decree dated 5th May 1984, which was confirmed in First Appeal No. 831 of 1989 before this Court.

7. It is not in dispute between the parties that during the pendency of the First Appeal, an amount of Rs. 50,000/- (Rs. Fifty thousand only) was deposited by the judgment debtors, which is already withdrawn by the decree holders.

8. The fact remains that the decree is not executed till date and the property remained in attachment. As such, the petitioners moved an application for removal of attachment pursuant to the provisions of Order XXXVIII Rule 9 of C.P.C. The said application came to be rejected by the impugned order dated September 14, 2015 passed by the learned Civil Judge (Junior Division), Chalisgaon, on the ground that the petitioners are required to approach the Court of competent jurisdiction, who has passed decree i.e. Court of Civil Judge (Senior Division). As such, this proceedings.

9. This Court by detail Orders dated 13th September 2017 and

20th September 2017 has already covered the issue to some extent as is sought to be canvassed before this Court.

10. Pursuant to the earlier orders passed by this Court, towards satisfaction of decree, an amount of Rs. 2,27,000/- is already deposited in this Court by petitioners/judgment debtors, based on which prayer for removal of attachment is made.

11. Said prayer is not objected by the Counsel for the respondents. However, he submits that any one party to the petition being decree holder under Special Power of Attorney, be permitted to withdraw the amount, which is deposited against satisfaction of the decree, to which the learned Counsel for the petitioner Shri Bramhe has no objection.

12. In the aforesaid backdrop, having regard to the provision of Order XXXVIII Rule 9 of C.P.C., it is not in dispute that attachment can be removed at a moment the decree is satisfied and the party admit that the decree is being satisfied as the amount of Rs. 2,27,000/- is already deposited in this Court.

13. In the backdrop of above, I hardly see any reason for not considering and granting prayer made by the petitioners before the Court below without going into technicalities as to competency of the said

Court to pass order impugned.

14. As such, it will be appropriate, in my opinion, to order release of the property pursuant to the provision of Order XXXVIII Rule 9 of C.P.C. having considered the consent extended by the learned Counsel for the respondents on behalf of the respondent that the decree in question stood satisfied. As the issue of limitation about execution of the decree is not raised before this Court, this Court has not adjudicated the same, but the order is passed purely on the consent extended.

15. The amount deposited in this court is permitted to be withdrawn by the decree holder through his legal heir either by remaining present himself or through power of attorney holder by moving appropriate application to that effect.

16. Property mentioned below :

Sr. No.	Name of the owner	Property details	Charge created for an amount of Rs.
1	Tejraj Pratapchand Jain	Gat No. 22 situated at Mouje Hisale Tal. Shirpur	75,000/-
2	Tejraj Pratapchand Jain	Gat No. 161 situated at Tardi Tal. Shirpur	
3	Tejraj Pratapchand Jain	Gat No. 106 situated at Tonde Tal. Shirpur	

stands released from the attachment pursuant to the judgment and decree passed in Special Civil Suit No. 101 of 1979.

17. The liberty as prayed, by the legal representatives of respondent No. 1(g)(4) that they be immediately brought on record by carrying out amendment, stands allowed by consent. Counsel for the respondent to carry out such amendment forthwith.

18. Office to accept remaining balance amount of Rs. 1000/- (Rs. One thousand only).

19. As such, Writ Petition stands allowed and disposed of in above terms.

(NITIN W. SAMBRE, J.)

pjm