

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

**WRIT PETITION NO. 12001 OF 2017
WITH
CA/12910/2017 IN WP/12001/2017**

JAWAHAR SHANTILAL SHAH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. R R Mantri h/f R R Sancheti
AGP for Respondent No.1 State : Mr. N T Bhagat
Advocate for Respondent 2 : Mr Bhavar Nitin R

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CORAM : V.K. JADHAV, J.
Dated: November 09, 2017
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PER COURT :-

1. Being aggrieved by the order passed below Exh.120 in Special Darkhast No.25/2007 by the Executing Court, thereby issuing warrant of arrest against the petitioner, this writ petition has been preferred. It also appears that, being aggrieved by the said order, petitioner initially approached this Court by filing Civil Revision Application No.184/2016, wherein this Court considering the submissions made on behalf of the petitioners therein including the present petitioner has granted 15 days period to approach the Apex Court. Said Civil Revision Application came to be disposed off. This Court with due regard to the submissions made on behalf of the petitioner in the said Civil Revision Application

granted breathing time of 15 days. It further appears that this Court had no occasion to consider the order passed below Exh.120 by the executing court on merits.

2. By filing present writ petition, the petitioner states that because of his old age and poor financial condition, he is not in a position to approach the Supreme Court.

3. It further appears from the contents of the application Exh.120 filed before the executing court by the Decree Holder that, the decree holder himself has prayed for issuance of the notice under Order 21 Rule 37 of the Civil Procedure Code. Though, the executing court has called upon the petitioner/original judgment debtor to submit his say to the said application Exh.120, the petitioner-judgment debtor could not file his say. Petitioner-judgment debtor has filed applications seeking time to file say, however, it appears that without there being any say filed on behalf of the petitioner/judgment debtor, the learned judge of the executing court has passed following order :-

*“No Say.
Advocate for Judgment Debtor is present.
Heard.
Issue Arrest Warrant under Order 21 Rule 38
of Civil Procedure Code.”*

4. It further appears that, the petitioner-judgment debtor has sought time to file his say/reply for various reasons and also on the ground that, even though, said Darkhast is filed for recovery of an amount of rupees forty five lacs and some odd amount in the year 2007, respondent-decree holder thereafter is seeking execution of the recovery of an amount to the tune of rupees eighty nine lacs and some odd amount. The petitioner/Judgment Debtor also sought details of said huge amount shown as due and outstanding against him so as to enable him to file a say to the application Exh.120.

5. Thus, considering the fact that, respondent-decree holder has prayed in the application Exh.120 for issuance of the notice to the petitioner-judgment debtor under Order 21 Rule 37 of the Civil Procedure Code, it would be appropriate if the petitioner-judgment debtor submits his say/reply to the said notice within ONE WEEK from the date of this order and the Executing Court shall consider the application, reply/say and after giving an opportunity of being heard to both the parties, may take an appropriate decision in terms of the provisions of Section 51 r/w Order 21 Rule 38 of the Civil Procedure Code, afresh. Needless to say that the orders passed subsequent to the order passed below Exh.120

carries no meaning. The Executing Court after giving an opportunity to the petitioner-judgment debtor to file his say, pass an appropriate order in terms of provisions of section 51 read with Order 21 Rule 38 of the Civil Procedure Code afresh. The Petitioner-Judgment Debtor shall file his say to the application Exh.120 within one week from the date of this order and the Executing Court shall pass an appropriate order in accordance with law within ONE MONTH after filing of the say by the petitioner- Judgment debtor. Writ Petition accordingly disposed of. No costs.

6. In view of disposal of writ petition itself, pending civil application also stands disposed of.

(V.K. JADHAV, J.)

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