

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

WRIT PETITION NO. 12728 OF 2017

Ashokkumar Narayandas Tharani .. Petitioner

Versus

Hotel Sagar Proprietor S. D. Jaiswal .. Respondent

**WITH
WRIT PETITION NO. 12708 OF 2017**

Girish Rajkumar Tharani through
GPA Narayandas Kanwarmal Tharani .. Petitioner

Versus

Hotel Sagar Proprietor S. D. Jaiswal .. Respondent

Shri Anil S. Bajaj, Advocate for the Petitioner in both matters.
Shri G. R. Syed, Advocate for the Respondent in both matters.

CORAM : S. V. GANGAPURWALA, J.

DATE : 21TH SEPTEMBER, 2018.

FINAL ORDER :

. Applications filed by the petitioners for attachment and sell of property of the judgment debtor are rejected. Aggrieved thereby present petitions.

2. Mr. Bajaj, the learned counsel for petitioners submits that, applications have been rejected by the Executing Court solely on

the basis of Sec. 60(kc) of the Code of Civil Procedure. The learned counsel submits that, the super structure over the land is owned by the judgment debtor. In view of that, Sec. 60(kc) would not apply. The Court has gone on wrong premise. The Court was laboured under wrong assumption.

3. Mr. Syed, the learned counsel submits that, the judgment debtor could not attend the Court and contest the applications. The learned counsel submits that, the land is taken on lease from the Municipal Council. In view of that, Sec. 60(kc) of the C. P. C. is rightly invoked by the Court.

4. If the judgment debtor has constructed the building over a lease hold premises, judgment debtor is owner of the super structure and not of the land. Dual concept of ownership exists. One persons may be owner of land and another persons may be owner of super structure. In view of that, there would not be any impediment to proceed with regard to super structure over it. Of course, after giving intimation to the municipal council.

5. Considering the above, impugned orders are quashed and set aside. However, it is stated that the judgment debtor could not remain present and contest the applications. In view of that, the Executing Court shall decide the applications filed by the petitioners for attachment and sell afresh.

6. I grant one more opportunity to the judgment debtor. The judgment debtor in these writ petitions shall deposit an amount of Rs. 50,000/- (Rs. Fifty thousands only) within a period of one month from today and remaining amount as per the decree within a period of two months thereafter.

7. In case the judgment debtor deposits the amount of installment as directed above, the Executing Court shall not proceed to decide the applications. However, if the judgment debtor commits default of first installment as directed above, the Executing Court shall proceed to decide the application filed by the petitioner for attachment and sell or any other application on its own merits. With these observations writ petitions stand disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Sept. 18

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