

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.180 OF 2018

Karur Vyasha Bank Limited,]
A Banking Company, registered under]
the Companies Act, 1913,]
having its registered office at :]
Frode Road, Karur, Tamil Nadu,]
and having its Branch Office at :]
Bokare Apartment, Building No.5,]
Kothrud, Pune - 411 029.] Petitioner

Versus

1. Hirabai Baburao Ekatpure,]
Age about 80 years, Occ. Nil]
2. Anil Baburao Ekatpure,]
Age about 47 years, Occ. Agriculturist,]
3. Nitin Baburao Ekatpure,]
Age about 53 years, Occ. Agriculturist,]
Respondent No.3 for himself and in the]
capacity of Constituted Power of Attorney]
of Respondent Nos.1 and 2.]
All residing at : At Post Malinagar, Rithe Mala,]
Taluka Malshiras, District Solapur.]
4. Prashant Baburao Ekatpure,]
Age about 50 years, Occ. Agriculturist,]
At Post Malinagar, Rithe Mala, Tal. Malshiras,]
District Solapur.] Respondents

Mr. Arvind P. Purohit for the Petitioner.

Mr. Sagar M. Kursija for Respondent Nos.1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH FEBRUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Purohit, learned counsel for the Petitioner, and Mr. Kursija, learned counsel for Respondent Nos.1 to 3.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 8th November 2017 passed by the 9th Civil Judge, Senior Division, Pune, below "Exhibit-24" in Miscellaneous Application No.254 of 2017.

3. The application at "Exhibit-24" was filed by the Respondents herein for framing issue as per the provisions of Order 14 Rules 1 to 3, read with Section 141, of the Civil Procedure Code, 1908. At this stage, it may be stated that, the said application was filed in Miscellaneous Application No.254 of 2017, which was filed under Order 21 Rule 58 of CPC, raising claim in respect of the attachment of the property.

4. The submission of learned counsel for the Petitioner is that, in this case, the 'Decree' was passed on 23rd June 2006 and in that 'Decree', the order of attachment of the suit flat, which was passed during pendency

of the Suit, on 31st August 2002, was confirmed and it was converted to '*attachment after the Decree*'. Since thereafter, the Respondents did not raise any objection to the attachment of the property and for the first time, they raise this objection in the year 2017; therefore, there is delay of more than 15 years in raising such objection. The Petitioner has, therefore, rightly raised the issue that the objection was designedly or unnecessarily delayed. This objection should have been considered by the Trial Court before proceeding to adjudicate the application filed under Order 21 Rule 58 of CPC. Instead of doing so, the Trial Court has proceeded to frame the issues and in those issues also, the Trial Court has not framed any issue relating to Section 58(1)(b) of CPC pertaining to '*whether the objection was designedly or unnecessarily delayed*'.

5. I find much substance in the submission advanced by learned counsel for the Petitioner in view of the above said facts, which are part of the record. The attachment order was passed in the year 2002 itself and after the 'Decree' was passed on 23rd June 2006, the said attachment was confirmed as '*attachment after the Decree*'. The present application under Order 21 Rule 58 of CPC is filed about fifteen years thereafter, then, definitely, there appears some substance in the contention raised by learned counsel for the Petitioner that the objection was designedly or unnecessarily delayed. Hence, it was incumbent on the Trial Court to consider this objection before proceeding to framing of

issue for adjudication of the said application. As the Trial Court has not done so, the impugned order passed by the Trial Court needs to be set aside with a direction to the Trial Court to decide the said objection, as raised by the Petitioner, in view of the provisions of Order 21 Rule 58(1) (b) of CPC. The said provision is mandatory in nature. It reads as follows :-

“58. Adjudication of claims to, or objections to attachment of, property :-

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that, no such claim or objection shall be entertained -

- (a) where, before the claim is preferred or objection is made, the property attached has already been sold; or*
- (b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.”*

6. As per Proviso (b) to Order 21 Rule 58(1) of CPC, therefore, no such claim or objection shall be entertained, if the Court considers that the claim or objection was designedly or unnecessarily delayed. The use of the word “shall” makes it necessary for the Trial Court to decide the

said objection before entertaining the application and hence, the Trial Court is directed to decide the said objection and thereafter to proceed with the said application in accordance with law.

7. As a result, the Writ Petition is allowed. The impugned order passed by the Trial Court is set aside. The Trial Court is directed to decide the objection raised by the Petitioner in terms of Proviso (b) to Order 21 Rule 58(1) of CPC first and thereafter to decide Miscellaneous Application No.254 of 2017 in accordance with law.

8. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]