

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION**

WRIT PETITION NO. 10074 OF 2013

Shri Madhukar Parsharam Bhanushali ...Petitioner

vs

Asif Abdul Latif Kharbe ...Respondent

Mr.Amol P. Mhatre for Petitioner.
None for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 17 JULY 2019

P.C. :

This writ petition filed under Articles 226 and 227 of Constitution of India seeks to set aside a judgment and order dated 26 August 2013 so far as it refuses to attach certain properties of the Respondent-judgment debtor in execution of a money decree.

2 None appears for the Respondent. Even on the last occasion, i.e. on 9 July 2019, none had appeared on behalf of the Respondent.

3 The Petitioner is a decree holder in Special Civil Suit No. 282 of 2007 filed against the Respondent. In the Respondent-judgment debtor's appeal from the decree, being First Appeal No.873 of 2012, this court was pleased to grant conditional stay of the decree. The condition, being of deposit of the entire decretal amount, not having been fulfilled by the Respondent, the executing court was free to proceed with execution of the decree. In the Petitioner's execution application, the executing court was pleased to partly allow his application for attachment of immovable properties of the Respondent. There were four properties of the

Respondent, namely, Grampanchayat House Nos.779/05, 779/13, 779/14, 779/19 and land admeasuring 1187 sq.yards of Survey No.13, Hissa No.1/2 at village Shelar, Taluka Bhiwandi, District Thane. All four properties were sought to be attached on the Petitioner's application, being Exhibit 22, Special Darkhast No.23 of 2012. The executing court (Civil Judge, Senior Division, Bhiwandi), was of the view that the property, being first floor of old House No.354, New House No.779, which was said to be of the value of Rs.27,93,680/-, was sufficient for recovery of the decretal dues, the money decree being for recovery of Rs.11,35,000/- with interest. The judgment debtor had no objection to attachment of this particular property. Being dissatisfied with the attachment being restricted to only one particular immovable property and not others, the Petitioner has filed the present petition, challenging the order of the executing court.

4 By an order dated 13 December 2013 passed by this court, the Respondent-judgment debtor was directed not to create any third party right in respect of the properties, bearing Survey No.779/19 and 779/14 as well as land bearing Survey No.13/1, 2 admeasuring 1187 sq.yards until further orders. By this order the court also issued a notice for final disposal. The matter has thereafter appeared from time to time before this court. At one stage, by an order dated 3 October 2016, this court directed the executing court to proceed with the sale of the first floor of House Property No.779, Old House No.354, proposing to rule on the further course of action in the writ petition depending on the outcome of such sale. It now transpires, as is reflected in the reports filed from time to time by the executing court, that contrary to the assurance given to the court and the order passed by the executing court, the Respondent has dealt with the

property attached by the executing court, namely, first floor of New House No.779, Old House No.354. The parties to whom the properties have been sold have even applied for intervention in the Petitioner's execution application.

5. It also appears that when the Respondent's appeal from the original decree was transferred to the District Court at Thane upon augmentation of its pecuniary jurisdiction, the Respondent procured a stay of the impugned decree by suppressing from the District Court the order of conditional stay granted by this court and further directions to proceed with the execution on account of non-fulfillment of the condition, as noted above.

5 These facts not only reveal a serious breach of the attachment order by the Respondent-judgment debtor, the property, which was said to be sufficiently valued so as to take care of the decretal dues of the Petitioner, having been sold by the Respondent-judgment debtor, the whole basis of his plea before the executing court for restricting the attachment to the particular property and not to the others, has been seriously undermined. Besides, and more importantly, a deliberate misrepresentation appears to have been made to this court and on its basis, orders have been procured from the court. It also transpires that the decretal dues would have to be satisfied from out of the other properties of the Respondent.

6 In the premises, and considering the conduct of the Respondent in breaching the order passed by the executing court and

assurance made to this court and on the basis of which this court passed its order on 3 October 2016 directing the executing court to proceed with the sale of first floor of House No.779, Old House No.354 and hold its hands as regards the other properties, the following order is passed:

7 The writ petition is allowed by setting aside the impugned order of the executing court dated 26 August 2013 and directing attachment of all properties listed in Special Darkhast No.23 of 2012. Special Darkhast No.23 of 2012 is, accordingly, allowed. Office to issue show cause notice under the Contempt of Courts Act, 1971 to the Respondent returnable on 19 August 2019.

8 The Petitioner shall be at liberty to apply for vacating the stay granted by the District Court at Thane in First Appeal No.144 of 2018. This order shall be brought to the notice of the District Court whilst seeking such order.

(S.C. GUPTE, J.)