

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 32072 OF 2018

Smt. Hirabai B. Ekatpure and ors. .. Petitioners
vs.
Karur Vysha Bank Ltd. And anr. .. Respondents

Mr. T.D. Deshmukh for the Petitioners.

CORAM : M. S. SONAK, J.
DATE : 8 APRIL 2019.

P.C. :-

- 1] Heard Mr. T.D. Deshmukh for the petitioners.
- 2] The challenge in this petition is to the order dated 12th October 2018 by which learned Executing Court has refused to raise attachment to the suit property by resort to the provisions under Order 21 Rule 58 of the CPC.
- 3] Mr. Deshmukh, learned counsel for the petitioners, submits that the suit property does not exclusively belonging to respondent No.2, i.e, judgment-debtor. He submits that even as of now, there is only an agreement for sale in favour of respondent No.2 and respondent No.2 wayback in the year 1999 had acknowledged that the consideration even for this agreement for sale was paid jointly by the petitioners along

with respondent No.2. Mr. Deshmukh submits that this aspect has not been considered by the learned Executing Court. He submits that mere delay in taking out an application for raising of attachment can never be a ground for dismissal of the petitioners' application. He further pointed out that there is material on record that the petitioners were not at all aware of the attachment orders. For all these reasons, Mr. Deshmukh submits that the impugned order may be set aside.

4] The record, in the present case, indicates that the attachment order was made on 31st August 2002. However, this was an order for attachment before judgment. After the suit was decreed, yet another order for attachment was made on 2nd December 2006. The application for lifting this attachment came to be made only in the year 2017, i.e., after delay of atleast 11 years, not to mention the delay since the date on which attachment before judgment was ordered.

5] The petitioners are not strangers. In fact, petitioner no.1 is a mother of respondent No.2 and the remaining

petitioners are siblings of respondent No.2, i.e., judgment-debtor. In these circumstances, learned Executing Court has quite correctly held that though there may be no period of limitation as such prescribed for filing an application to lift attachment, nevertheless, such applications will have to be made within reasonable period.

6] That apart, there is absolutely no material on record to establish that the petitioners have any interest in the property which is attached. The statement made by respondent No.2-judgment debtor, that even the petitioners have contributed to the purchase of suit property has been rightly rejected by the Executing Court. On the basis of such a self-serving statement, respondent No.2 cannot frustrate the execution of decree.

7] From the material on record, there is really no reason to interfere with the observations made by the Executing Court that the application, which came to be dismissed by the impugned order, was taken out only to protract the execution proceedings and an attempt to deny the decree-

holders the fruits of decree.

8] There is no jurisdictional error in the view taken by the learned Executing Court. Accordingly, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)