

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3867 OF 2019

Prakash s/o Rupchand Lalwani
-vs-
Ushabai Wamanrao Nirmal and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri U. K. Bisen, Advocate for petitioner.
Shri P. A. Dharaskar, Advocate for respondent Nos.1 & 2.
Shri D. Mankar, Advocate for respondent Nos.3 and 4.

CORAM : A.S.CHANDURKAR, J.
DATE : September 30, 2019

Rule. Heard finally.

The challenge raised by the petitioner who is the original objector in executing proceedings is to the refusal by the Executing Court to release various items attached by it while executing the decree passed in favour of respondent Nos.1 and 2.

2. By the judgment passed in R.C.S. No.250/2012 a decree for recovery of Rs.2,74,291/- has been passed against the respondent Nos.3 to 5. When that decree was sought to be executed, the petitioner who is the brother of defendant No.1 and son of defendant No.2 raised an objection. According to him the property which was attached by the Bailiff was is personal property and as there was no decree passed against him, the attachment was illegal. The initial application filed by the objector below Exhibit-74 was partly allowed and two vehicles were permitted to be released on Supratnama. By the present application the request for releasing the remaining articles stands rejected.

3. Heard the learned counsel for parties and perused the documents placed on record. According to the objector since various movables had been attached the interest of decree-holder can be protected by calling upon the objector to furnish surety so as safeguard the interest of the decree-holder.

4. On the other hand according to the decree-holders the objector is avoiding to lead evidence in support of the objections raised by him. On behalf of the original judgment-debtor the objection raised to the jurisdiction of the Executing Court is still undecided.

5. Considering the nature of dispute and in the light of the fact that various movables have been attached during the course of execution, the following order would serve the interests of justice :

The petitioner-objector shall furnish an Indemnity Bond for amount of Rs.75,000/- before the Executing Court. On such Bond being so furnished, the movables shall be released in favour of the objector. He shall further undertake not to alienate those articles till the execution proceedings are pending. The proceedings in R.D. No.12/2012 are expedited. The objector shall lead evidence in support thereof and the trial Court shall not grant unnecessary adjournments. The proceedings be decided expeditiously by the Executing Court.

Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE