

Anand

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

**WRIT PETITION NO. 2152 OF 2020**

Narayan Govind Javeri ( since deceased ) through .Petitioners  
Lrs. & ors.

Vs.

Subhash Govind Zaveri ( since deceased ) through .Respondents  
Lrs. & ors.

Mr. M. Limaye a/w Ms G. Velankar, Advocate, for the Petitioners  
Mr. P. Yadav, Advocate, for the Respondent Nos. 1-a to 1-c  
Mr. R. Shinde, Advocate, for the Respondent Nos. 2-a to 2-d, 3-a & 4 to  
7

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 02.03.2020**

**P. C.**

. Heard learned counsel for the parties.

2. By this Petition, the Petitioners, who are the Judgment Debtor Nos. 2 & 3 have impugned the orders dated 29.01.2020 and 01.02.2020 passed by the learned 7<sup>th</sup> Jt. C. J. S. D., Pune below Exhs. 613 and 616 in Final Decree Application No. 76 of 1963.

3. Learned counsel for the Petitioners submits that there was no justification for the trial Court to direct the legal representative of the Judgment Debtor Nos. 2 & 3 to deposit security amount of Rs. 10,000,000/- within a stipulated period, failing which the said

properties would be attached. He further submits that as the Petitioners failed to deposit the security amount so directed vide order dated 29.01.2020, the trial Court attached the properties which were in possession of the legal representative of the Judgment Debtor Nos. 2 & 3 vide order dated 01.02.2020. He further submits that although 15 days time was given to the legal representative of the Judgment Debtor Nos. 2 & 3 to deposit the security amount as directed vide order dated 29.01.2020, the trial Court within two days, before the period came to an end, attached the suit property in possession of the legal representative of the Judgment Debtor Nos. 2 & 3 vide order dated 01.02.2020.

4. Learned counsel for the Respondents opposes the Petition and submits that no interference is warranted in the impugned orders.

5. Perused the papers. The Petitioners are the legal representative of the Judgment Debtor Nos. 2 & 3 and the Respondents are the decree holders. Pursuant to the decree passed in favour of the Respondents, the Respondents filed execution proceedings i. e. final decree No. 76 of 1963. In the said final decree No. 76 of 1963, the Respondent Nos. 3 to 7 filed an Application ( Exh. 613 ) seeking appointment of a Court Receiver as well as Court Commissioner. Pursuant thereto, the trial Court by way of an interim order passed the

following order.

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**ORDER**

1) It is directed to L. R's of J. D. No. 2 and 3 to deposit security amount of Rupees One Crore (each) i. e. for J. D. No. 2 and J. D. No. 3 separately within 15 days from today.

2) If L. R's of J. D. No. 2 and 3 not deposited security amounts in the Court then the suit properties in their possession will be attached.”

6. The Petitioners immediately filed an Application ( Exh. 616 ) and sought stay of the said order. However, the said Application was rejected by the trial Court on the very same day i. e. on 29.01.2020. On 01.02.2020 i. e. within two days of the passing of the order dated 29.01.2020, the trial Court without waiting for 15 days to be over, as directed vide order dated 29.01.2020 directed attachment of the suit properties which were in possession of the legal representative of the Judgment Debtor Nos. 2 & 3.

7. The trial Court also vide order dated 01.02.2020 directed both the parties i. e. the decree holder as well as legal representative of the Judgment Debtor Nos. 2 & 3 not to transfer the suit properties in their possession till further orders of the Court and file undertaking to that effect.

8. Having perused the orders dated 29.01.2020 and 01.02.2020, the trial Court in the facts could not have passed such a drastic order directing the legal representative of the Judgment Debtor Nos. 2 & 3 to deposit security amount of Rs. 10,000,000/- each. Further, inspite of granting 15 days time to the legal representative of the Judgment Debtor Nos. 2 & 3 to deposit the security amount, the trial Court within two days, without waiting for 15 days, attached the suit properties of the legal representative of the Judgment Debtor Nos. 2 & 3.

9. Having regard to the aforesaid, the impugned orders dated 29.01.2020 as well as the order dated 01.02.2020, inasmuch as, it directs deposit of security amount and attachment of the suit properties of the legal representative of the Judgment Debtor Nos. 2 & 3 are concerned, the same are quashed and set aside. The Application ( Exh. 613 ) is restored back to its original file. The trial Court to decide the said Application ( Exh. 613 ) on its own merits uninfluenced by the earlier orders dated 29.01.2020 and 01.02.2020. Since the final decree is of the year 1963, the hearing of the same is expedited. The trial Court to conclude the hearing of the same i. e. Final Decree within three months from the date of receipt of this order.

10. It is also clarified, that as far as the order dated 01.02.2020 passed below Exh. 613, inasmuch as, it directs the decree holder as well as legal representative of the Judgment Debtor Nos. 2 & 3 not to transfer the suit properties in their possession till further orders of the Court and file their respective undertakings in the trial Court is concerned, the parties shall abide by the said directions.

11. Accordingly, the Petition is disposed of on the aforesaid terms.

All concerned to act on the authenticated copy of this order.

**(REVATI MOHITE DERE, J.)**