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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10896 OF 2019

Mr. Vitthalrao Keshavrao Deshmukh

.... Petitioner.

V/s

Ms. Padma Vitthalrao Deshmukh

.... Respondent.

Mr. Hitesh P. Vyas for the Petitioner.

Mr. R.S. Mane i/b Mr. Prabhakar S. Ranshur for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 29, 2020

P.C.:-

1] The order impugned is dated 10/12/2018 passed below Exhibit-88 whereby application preferred by the Petitioner for attachment of his own property and auctioning the same for clearing arrears of maintenance came to be rejected.

2] Submissions are, property is admittedly owned by the Petitioner and in view of provisions of Section 51 of Civil Procedure Code, Petitioner can seek permission of the Court for auctioning the property

so as to clear the arrears. In support of his contention, reliance is placed by the learned Counsel on the judgment of the Apex Court in the matter of *Jolly George Varghese and Anr. vs. The Bank of Cochin*¹.

3] Learned Counsel for the Respondent supports the impugned order.

4] Considered submissions.

5] This Court has convicted the Petitioner in Contempt Petition No.246 of 2016 vide order dated 28/3/2019. While dealing with the said contention in the contempt proceedings, this Court has made following observations in para 34 of the order :-

“vi. Respondent No.1 has reiterated that he is working as a Manager in the said Petrol Pump and that his salary is Rs 20,000/- per month. Thus, the contention of the first respondent in that regard is false to his knowledge and made solely with a view to depriving the petitioner and her daughters of their legal dues as per the maintenance orders.”

1 (1980) 2 SCC 360

“vii. Affidavit filed by the petitioner also depicts the properties standing in the name of respondent No.1 and other members of the joint family. It also shows that the Petrol Pump is in operation though respondent No.1 tried to contend that it is not operating after 1.5.2018. Not only that respondent No.1 filed application Exhibit-88 in P.A. No.309/2014 for attachment of Indira Bungalow which is in possession of the petitioner and two daughters. By order dated 10.12.2018, the learned trial Judge has rejected that application. Thus, respondent No.1 has also even attempted to sell Indira bungalow where presently the petitioner and her daughters are residing.”

Since this Court has already rejected similar contention on earlier occasion, in my opinion, this Court need not go again in the said issue. Ratio of judgment of Apex Court in *Jolly George Varghese*, cited supra on which reliance is placed by the learned Counsel for the Petitioner is not applicable to the facts of the present case.

6] Writ Petition is devoid of merit. As such same stands dismissed.

7] Respondent is at liberty to take out appropriate proceedings before the court below for execution of the order passed by this Court in contempt proceedings.

(NITIN W. SAMBRE, J.)