

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

924 WRIT PETITION NO.12284 OF 2021

**SANJAY BHIMRAO PATIL AND OTHERS
VERSUS
M/S SHRIRAM CITY UNION FINANCE LTD GPA HOLDER NAMELY
INDRAJIT D MAHAJAN**

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Advocate for Petitioners : Mr. Bora Satyajit S.

**CORAM : MANGESH S. PATIL, J.
DATE : 07.12.2021.**

PER COURT :

The petitioners are the judgment debtors who are aggrieved by the order of attachment passed by executing Court under Order XXI Rule 54 of the Code of Civil Procedure.

2. I have heard the learned advocate for the petitioners. He submits that since the execution was filed beyond two years of passing of the decree, a notice was directed to be issued to them. They had raised the objection and even without considering and deciding the objection, the executing Court has proceeded to pass the order under challenge. He would further submit that the petitioners are ever ready and willing to pay the amount under the decree but were merely seeking some concession. However, in view of such order of attachment all the doors are closed and they cannot now explore possibility of any such settlement.

3. I have carefully considered the submissions and the papers including the order under challenge. There cannot be any dispute about the passing of the award which is put to the execution. It appears that the property of the petitioner No. 5 was mortgaged to the respondent/decreed holder by a registered deed of mortgage. Needless to state that it is for a decreed holder to explore and choose the remedies as are suitable to him for execution of the award. It is his choice in what manner he can take assistance of the

executing Court for recovery of money. It would not lie in the mouth of a judgment debtor to insist for the manner in which a decree can be satisfied. If at all they are seeking some adjustment the request could have been made before the executing Court, in the absence of which, the petitioners cannot be heard now to say that they are ready to pay but would require some concession.

4. So far as the other argument is concerned, though the executing Court had directed a notice under Order XXI Rule 22 of the Code of Civil Procedure to be issued, pursuant to such a notice the petitioners had put in appearance and had filed an objection. It is after hearing them that the order under challenge has been passed and therefore it cannot be said that the executing Court has erred in passing the order without considering the objection of the petitioners. The whole purpose of directing a notice under Order XXI Rule 22 of the Code of Civil Procedure is to put the judgment debtor to notice that though belatedly the decree/order has been put to execution. The purpose was already over since the petitioners had put in appearance in the execution proceeding. All these facts and circumstances have been considered by the executing court while directing an attachment of the property standing in the name of the petitioner No. 5 which was mortgaged to the respondent-financial institute.

5. Besides, admittedly, no application under Order XXI Rule 58 of the Code of Civil Procedure seems to have been filed by the petitioners. That could be an efficacious remedy available to them to lift the attachment. In absence of which I find no perversity or arbitrariness in passing the order of attachment.

6. The Writ Petition is dismissed in limine.

(MANGESH S. PATIL, J.)

mkd/-