

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7123 OF 2021

Meenal Manik Yedur & Anr. .. Petitioners

Vs.

Satyamma Krishnahari Singam
& Anr. .. Respondents

...

Mr. Prasad P. Kulkarni for the petitioners.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 26TH OCTOBER, 2021.

P.C:-

1. The petitioner is aggrieved by the order passed by the 2nd Joint Civil Judge, Senior Division, Solapur on 17/02/2021 on an application filed by the plaintiff seeking attachment of property before judgment by invoking Order 38 Rule 5 of the CPC.

2. Heard learned counsel for the petitioners and perused the impugned order. It is manifest that the plaintiffs filed the suit against defendants and the property in the schedule is the one which is owned by defendant No.1. An application was moved seeking attachment of the property before judgment in the wake of the notice issued in a daily newspaper and that was pleaded to be the cause for seeking attachment.

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3. The application was opposed by the defendants and the court recorded that the property sought to be attached was brought for sale and even a notice was given but subsequently the transaction was cancelled. The defendants pleaded before the court that the property is already under attachment under the SARFAESI Act at the instance of the Canara Bank. In any case, the property cannot be sold. In the wake of the said statement, the impugned order record that the apprehension expressed by the applicant justifying invocation of power to effect attachment before judgment cannot be exercised.

4. I concur with the said finding rendered in the said impugned order. Since the apprehension expressed does not exist, learned Judge was justified in declining the relief claimed. The request made by learned counsel for the petitioners to create a second charge in their favour in the said property is not within the realm of my jurisdiction. Hence, the writ petition is dismissed.

5. Needless to state that the observations made above are limited to the application, which was decided by the impugned order.

[SMT. BHARATI DANGRE, J.]