

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

WRIT PETITION NO.13983 OF 2021

SHAIKH RASHID FAKIR MOHAMMAD
VERSUS
NASIM RAUF PATHAN AND OTHERS

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Advocate for the Petitioner : Shri Dixit Satyajeet S.
Advocate for Respondents 1 to 7 : Shri Shermale K. N.

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 31st January, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the respondents.
2. The petitioner has posed a challenge to the order dated 21.10.2021 passed by the Executing Court on an application vide exhibit-48 in MACP Darkhast No.32/2012, seeking setting aside of the attachment order passed in respect of the suit house.
3. Brief facts, on the basis of the contentions of the contesting parties, can be appreciated to the effect that the petitioner had purchased Gram Panchayat House No.246 with City Survey No.83 from respondent No.8A vide registered sale deed executed in the year 2009. The Motor Accident Claims Tribunal allowed the claim petition filed by respondent

Nos.1 to 7 on 14.03.2012 and directed the compensation of Rs.3,66,000/- to be paid jointly to the claimants by respondent Nos.8 and 9 along with interest @ 7% per annum.

4. The respondent Nos.1 to 7/ claimants filed the execution proceedings for execution of the award dated 14.03.2012 and they also filed an application vide exhibit 28 for attachment of the house properties owned by respondent No.8A wherein, the attachment of house property No.246, purchased by the petitioner, was also sought. This application exhibit 28 was allowed vide order dated 28.11.2019 and the property came to be attached. The claimants/ decree holders filed an application for putting the said property for sale and this application exhibit-39 was also granted vide order dated 21.10.2021. Respondent Nos.8A to 8D moved an application exhibit-41 for setting aside the attachment order by stating that this property was already sold to the petitioner in the year 2009 itself vide registered sale deed. This application filed by respondent Nos.8A to 8D was rejected on 21.10.2021.

5. The petitioner, thereafter, moved an application exhibit-48 for setting aside the attachment order qua his property i.e. house No.246 purchased by him through the registered sale deed and this application has been rejected vide the impugned order. Hence, the present writ petition.

6. During the course of hearing, the learned advocate for the

petitioner has pointed out to me that the properties, which are subjected to attachment, are three in number being Gram Panchayat House Nos.235, 236 and 246 of village Ghargaon, Taluka Sangamner, District Ahmednagar. As far as the petitioner is concerned, he only sought a relief and interjection in the execution proceedings in respect of House No.246. The order passed below exhibit-39 reveals that the learned Member, Motor Accident Claims Tribunal, had directed that all the properties be sold for satisfaction of the decree and this has been done without obtaining the valuation of the said properties and without assessing, whether, the entire properties are required to be sold for satisfaction of the decree. The decretal amount as on today, stands to Rs.7,45,482/-. It is, therefore, necessary to ascertain the valuation of the properties so as to find out whether, all three properties are required to be sold in order to satisfy the decree.

The learned counsel for the petitioner has placed on record, the valuation report dated 16.12.2021 submitted by B.R. Consultant and it is submitted that this report was not tendered before the Executing Court and for the first time, it is placed before this Court. On perusal of this report pertaining to House Property Nos.235 and 236 i.e. excluding the property of the petitioner, the value of two properties has been estimated at Rs.11,12,000/-.

7. On the last date of hearing, I had asked the learned counsel

for the respondents, whether, he had obtained the estimates about the said properties from any valuer or government approved valuer, to which, the response of the learned counsel is that he requested the government agency to submit the valuation report, but the same is declined on the ground that the description of the property is not properly given.

8. In the wake of the aforesaid, the learned Judge ought to have obtained the valuation of the properties from the Government agency in order to ascertain the actual valuation of three properties before directing that all three properties are necessary for executing the decree in favour of the decree holders. Without undertaking the said exercise, the rejection of the application exhibit 48 is premature and the learned Judge ought to have undertaken the exercise on obtaining the valuation of House Property Nos.235 and 236 together and the valuation of the petitioner separately so as to ascertain whether, the property of the petitioner deserves its attachment, by keeping in mind the objection raised by the petitioner to the effect that before the Tribunal could pass the judgment and order fastening the liability of the motor accident on respondent Nos.8 and 9, the property was already transferred to the petitioner by way of the registered sale deed in 2009 and therefore, bonafides, prima facie, could not be doubted.

In any case, in absence of the aforesaid exercise being undertaken, the impugned order dated 21.10.2021 passed below exhibit

48, therefore, deserves to be set aside and is, accordingly, set aside and the application exhibit 48 is restored, with the direction being issued to the Executing Court to obtain valuation of the properties and thereafter, to pass an appropriate order on exhibit 48 as to whether, the property of the petitioner deserves an attachment for executing the judgment and decree of the Tribunal. Let this exercise be carried out within a period of four weeks from today.

Needless to state that, the petitioner as well as the respondents are permitted to press their respective stands before the Executing Court as to whether, the transaction in the form of the registered sale deed was malafide transaction to avoid execution of the decree.

This Writ Petition is allowed in the aforesaid terms.

kps

(SMT. BHARATI H. DANGRE, J.)