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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.428 OF 2022

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|----|---|-------------|
| 1. | Sherbano Khalik Shaikh
Age – 53 years, Occ – Household | PETITIONERS |
| 2. | Tausif Khalik Shaikh
Age – 35 years, Occ – Business | |
| 3. | Arshad Khalik Shaikh
Age – 31 years, Occ – Business | |
| 4. | Asma Khalik Shaikh @ Asma Wasim Khan
Age – 33 years, Occ – Household | |

All R/o Ghargaon, Taluka – Sangamner
District - Ahmednagar

VERSUS

- | | | |
|----|---|-------------|
| 1. | Naseem Rauf Pathan
Age – 52 years, Occ – Household | RESPONDENTS |
| 2. | Rauf Sandu Pathan
Age – 55 years, Occ – Business | |
| 3. | Juned Raud Pathan
Age – 25 years, Occ – Business | |
| 4. | Tarannum Rauf Pathan
Age – 30 years, Occ – Household | |
| 5. | Tahura Rauf Pathan
Age – 28 years, Occ – Household | |
| 6. | Ruksar Rauf Pathan
Age – 23 years, Occ – Household | |
| 7. | Zeenat Rauf Pathan,
Age – 21 years, Occ – Household | |

All R/o Shramiknagar

Sangamner, District – Ahmednagar

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Mr. Vinod Y. Bhide, Advocate for the petitioners
Mr. K. N. Shermale, Advocate for respondents
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th JANUARY, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. This petition takes exception to the orders passed below Exhibits-39 and 41 in MACP Darkhast No. 32 of 2012 by the learned Member, Motor Accident Claims Tribunal, Sangamner.
3. The petitioners are the legal heirs of original Judgment Debtor Shaikh Khalik Rajjak against whom an award was passed in Motor Accident Claims Petition No. 97 of 2006, on 14th March, 2012. Husband of petitioner No.1 and father of petitioners No. 2 to 4, namely, Shaikh Khalik Rajjak, owner of the vehicle involved in the accident, was respondent No. 1 and the driver of the vehicle was respondent No.2 in the Claim Petition. Respondents No. 1 and 2 were jointly and severally held liable to pay compensation of Rs.3,66,000/- along with interest @ 7.5 p.a. from the date of the complaint till the amount is paid.

4. On 5th July, 2012 Execution Petition No. 32 of 2012 came to be filed for execution of the judgment and award passed by the Tribunal. After passing of the Award by the Tribunal and during pendency of the execution petition, judgment debtor No.1 – Shaikh Khalik Rajjak expired on 2nd October, 2013. The award remained to be satisfied. Thereafter, the petitioners being LR's of J.D. No.1 were arrayed as judgment debtors in the execution proceedings.

5. By filing application Exhibit-28 in the Execution Petition, the properties standing in the name of the Judgment Debtor No.1 were sought to be attached by the decree holders. By order dated 28th November, 2019, the executing court issued attachment warrant under Order XXI, Rule 54 of the Civil Procedure Code against the properties mentioned in the said application Exhibit-28, namely Gram Panchayat House No.235, admeasuring 336 square feet, Gram Panchayat House No.236 admeasuring 471 square feet and Gram Panchayat House No.246 admeasuring 540 square feet, situated at village Ghargaon, Taluka – Sangamner, District - Ahmednagar.

6. By filing application Exhibit-39, the decree holders requested for auction of the attached properties, for recovery of

the amount due to them. The petitioners resisted the said application Exhibit-39 contending that the deceased had no concern with the attached properties. The property bearing Gram Panchayat House No.236 is the self acquired property of the Judgment Debtor No.1A and as such, it is not liable to be attached and sold in the execution for the satisfaction of the decree. In view of Section 50 (2) of the Code of Civil Procedure, self acquired property of petitioner / JD No.1A is not liable to be attached and sold. The Executing Court, by the impugned order, allowed the application Exhibit-39 and directed sale of the attached property.

7. By filing application Exhibit-41, the petitioner sought cancellation of the attachment warrant against the attached properties. This application is rejected by the Executing Court, by the impugned order. Both these orders passed below Exhibits-39 and 41 are questioned in the present writ petition.

8. Heard learned advocate for the petitioners and learned advocate for the respondents.

9. Learned advocate for the petitioners strenuously submitted that the properties attached by the Executing Court are the self acquired properties of petitioner No. 1 / JD No.1A, which she has

purchased from the amount received from her maternal home and the same are not liable to be attached and sold for execution of the decree. By placing reliance on the sale deeds of the attached properties, he submitted that the properties were purchased in the name of petitioner No.1 and, therefore, the Executing Court was not justified in rejecting the application filed by the petitioners. He further submits that merely because in the Gram Panchayat record, the properties are recorded in joint name of petitioner No.1 and her deceased husband, that by itself is not sufficient to come to the conclusion that the properties were purchased by the deceased husband of petitioner No.1. The Gram Panchayat record is only for the purpose of assessing tax and, therefore, the same cannot be relied upon to come to a conclusion that the properties were owned by the deceased husband of the petitioner No.1. He, therefore, submits that the Executing Court has erred in rejecting the application filed by the petitioner. In support of his submissions, he relied on ***"Madhukar Sagun Karpe and Others V/s Institute of Public Assistance" 1998 (0) AIR (BOM); "Bandaru Srinivassa Rao V/s M/s Sreyobhilashi Chit Funds Wyra and Others" 2007 STPL 19094 AP and "Sushil Kumar V/s Additional District and Sessions Judge, Hapur and Others" 1999 STPL 10041 Allahabad.***

10. Per contra, learned advocate for the respondents vehemently opposed the petition contending that the attached properties are purchased by the deceased husband of petitioner No.1 from the income of liquor business. The petitioner No.1 had no independent source of income and she is a housewife. He, therefore, submits that the Executing Court was right in rejecting the application filed by the petitioners. He further submits that though the judgment and award is passed in the year 2012, the petitioners have succeeded in prolonging the matter and till date not a single rupee is deposited by the petitioners in the execution of the proceedings. He, therefore, submits that there is no substance in the writ petition and the petition is liable to be dismissed.

11. On going through the sale deeds relied on by the petitioners, it is clear that the petitioner No.1 has shown her occupation as housewife. One sale deed is of the year 1997 and the second is of the year 2007. In both the sale deeds, husband of the petitioner No.1 is shown as witness.

12. There appears substance in the contention of the learned advocate for the respondents that the second sale deed is executed in the year 2007 in the name of petitioner No.1, deliberately with a view to avoid attachment of the property in

the execution proceedings, as claim petition was filed in the year 2006.

13. Except bare words of the petitioners that the attached properties are purchased by petitioner No.1 by bringing money from here maternal house, there is nothing on record to substantiate these contentions. It is, therefore, clear that only with a view to avoid liability to pay the amount awarded by the Tribunal, these contentions are raised by the petitioners. The Executing Court, after taking into consideration these aspects, has rightly attached the properties and considering the fact that the decree is not satisfied till date, was justified in putting the attached properties for auction. No illegality or perversity is found in the impugned order.

14. In "**Madhukar Sagun Karpe**" (*supra*), this Court has held that judgment debtor's liability for debts of predecessor is to the extent of estate acquired from predecessor. There cannot be dispute about the said proposition. However, in the case in hand, since the properties are of the judgment debtor, who is no more, the same are rightly attached by the Executing Court.

In "**Bandaru Srinivassa Rao**" (*supra*), learned Single Judge

of the Andhra Pradesh High Court has reiterated the same principle that the legal representatives are liable only to the extent of properties of the deceased, which had come to his hands and there is duty cast on the courts to examine whether the judgment debtor inherit any property or whether the property of the deceased is in the hands of the legal representatives and then only to pass orders of attachment. Since this exercise is done in the present case by the Executing Court, this ruling is of no help to the petitioners.

The same principle is reiterated in "*Sushil Kumar*" (*Supra*) also. Therefore, all the three judgments cited on behalf of the petitioners are not helpful to the petitioners' case.

15. For the aforestated reasons, no fault is found with the orders impugned in the present writ petition. There is no substance in the challenge raised by the petitioners in the writ petition. The writ petition is, therefore, dismissed. Rule discharged. No costs.

[NITIN B. SURYAWANSHI]
JUDGE