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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2925 OF 2014**

Inderjeet Kaur

....Petitioner

V/s

Vijay S/o Vasant Angne and Ors.

.....Respondents

Mr. Makarand Kale i/b Mr. Vidnyan Daware for the Petitioner.

Mr. Mangal Bhandari a/w Mr. Mangesh M. Deshmukh for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 21, 2022

P.C.:-

1] This Petitioner is a stranger/objector to the decree which is delivered in Special Civil Suit No. 42 of 2004. Petitioner took out an objection to the execution of decree vide Application-Exhibit-30 moved below Order XXI Rule 58 of the Civil Procedure Code for inquiry, which is rejected vide impugned order dated 7/12/2013. As such, this Petition.

2] The submissions of learned Counsel for the Petitioner are, the Petitioner and the Judgment Debtor are married and residing in very same property of which attachment is ordered in execution of the

decree. He would claim that Petitioner-wife alongwith three daughters, out of whom one is married, are residing on the mezzanine floor and the judgment debtor/husband is residing on the ground floor. He would claim that the property cannot be attached as the Petitioner has 50% share in the suit property. That being so, entire property which is a residential unit cannot be subjected to execution, as the same is contrary to the very scheme of Section 60(1)(c) of the Civil Procedure Code. He would as such claim that the order impugned is liable to be set aside with directions to the executing Court to conduct inquiry under Order XXI Rule 58.

3] The prayer is opposed by the Counsel for Respondent No.1/decree holder as, according to him, money decree for last more than 22 years is not satisfied in view of various objections by Judgment Debtor and his relatives like objector. According to him, Petitioner is a proxy of judgment debtor. As such, he sought rejection.

4] Considered rival submissions.

5] On the date of moving of the Application-Exhibit-30, amount of

Rs 22,36,525/- was recoverable from Judgment Debtor which perhaps, by this time, has crossed almost Rs 50,00,000/-. Be that as it may, this Court has given an option to the Petitioner/Objector who is admittedly wife of Judgment Debtor to deposit the decretal amount so as to get rid of the execution proceedings, which the Petitioner has specifically refused.

6] As a consequence of above, this Court is required to appreciate the submissions.

7] Petitioner has come out with a case that she is residing along with her daughters on the mezzanine floor whereas Judgment Debtor is residing on the ground floor. Even if the said contentions for the sake of argument are accepted, it can be easily inferred that the property which is in possession of the Judgment Debtor is a property which is subjected to execution and the same is independently enjoyed by the judgment debtor. Fact remains that present proceedings are stalled by the Petitioner while acting hand in glove with Judgment Debtor for considerable period i.e. from 2012 till this date i.e. for a period of 10 years which sufficiently speaks of the

intentions of the Petitioner. Petitioner, wife of Judgment Debtor, has successfully stalled the execution proceedings for about 10 years and is residing under one roof, as rightly pointed out by the Counsel for Respondent No.1, is set up by the Judgment Debtor and both of them have every intention to frustrate the decree.

8] Though the Petitioner-Objector has drawn support from the Judgment of the Apex Court in the matter of *Kiran Bala Vs. Surinder Kumar* reported in (1996) 4 SCC 372 so as to claim that living house cannot be attached in execution of the decree, the fact remains that such Judgment is based on State Amendment as is apparent from the Code of Civil Procedure, 1908, thereby inserting Sub-section (ccc) to Section 61. Said State Amendment is restricted to the extent of State of Punjab and Haryana and that being so, law therein cannot be made applicable to the facts of the present case.

9] Apart from above, from the appreciation of the rival claims in the petition, particularly material placed on record by the Petitioner, it cannot be inferred that the Petitioner, wife of Judgment Debtor

alongwith her daughter are not joint in mess, but are residing separately. But for the oral pleadings, there is no material evidence on record to infer that there exists a dispute between the Petitioner and her husband-Judgment Debtor. Apart from above, the claim that she has 50% share in the suit property cannot be inferred from the recitals of title deed which is sought to be relied on. Petitioner's claim that she has paid the part consideration for acquiring interest in the said property, cannot be inferred from record, as no material about such payment viz. bank entries, cheque details or RTGS details are brought to my notice. As such, not only the objection of the Petitioner but even present Petition is without any basis, as but for pleadings, no material in the form of documentary evidence is brought on record to infer that Petitioner has any claim over the suit property.

10] The fact remains that Exh. 30 preferred by the Judgment Debtor is in relation to property viz. flat no. 203/A on the second floor in the building in question. The Court below instead of mentioning the said property in the impugned order has committed an error of fact in mentioning that attachment of flat no. 103 in Oswal Palace, Mira

Bhayender Road, Mira Road (E) is released to the extent of 50%. As such, said property details are in relation to flat no. 203/A.

11] In the aforesaid background, I hardly see any any reason which warrants interference in the impugned order. Petition as such fails and same stands dismissed.

12] The executing Court is directed to proceed ahead with the execution expeditiously.

(NITIN W. SAMBRE, J.)