

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.301 OF 2009
WITH
CIVIL APPLICATION NO.2358 OF 2008**

KSL and Industries Ltd ... Appellant
V/s.
Gotadaki and Company and Ors ... Respondents

Mr. Kiran Kulkarni with Mr. Neha Bachim for Kulkarni
and Associates for the appellant.

Mr. V.B. Rajure for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2023

P.C.:

1. The appeal arises out of rejection of an application raised under Order 21 Rule 58 of the Code of Civil Procedure, 1908.
2. The Decree Holder respondent had filed RCS No.94 of 2003 for recovery of amount of Rs.5,00,697.15/- (Rupees Five Lakh Six Hundred Ninety Seven Hundred and Fifteen Paise Only) for *supplying* of cotton bale to erstwhile Deccan Co.op. Spining Mill, Ichalkaranji. On 1st September, 2005 RCS No. 94 of 2003 was decreed being Decree Holder filed execution proceeding No.7 of 2006 on 12th July, 2006. The appellant filed objection raising to the attachment with the property purchased by the appellant in a auction sale. On 16th February, 2006 sale certificate was issued in favour of the appellant. By the impugned order dated 23rd March,

2007 learned Executing Court rejected the application under Order 21 Rule 58 of Civil Procedure Code, 1908. In an application filed against the order dated 23rd March, 2007, this Court set aside the order in First Appeal No.161 of 2008 remanding the proceeding to the Executing Court. On 3rd April, 2008 the Executing Court rejected the application.

3. The Appellant has, therefore, filed present appeal. According to the appellant, he has purchased property under attachment in an auction. Therefore, he is not liable to pay the amount of decree.

4. The relevant clause noted by the Executing Court recognizing liability of appellant is as under.

“All charges, levies taxes or any other liabilities accrues against the property shall be borne by the purchasers”

5. The relevant clause quoted by the Executing Court specifically creates liability on auction purchaser to pay all other liabilities agreed against the property.

6. Since there is no dispute about the entitlement of the respondent to recover the amount. In view of clause referred above the appellant cannot raise objection for recovery of amount from sale of the said property.

7. The appellant has deposited decretal amount in this Court. The *respondent No.1* is, therefore, permitted to withdraw the amount deposited in this Court along with accrued interest.

8. In view of clause referred aforesaid, there is no merit in the appeal. The First Appeal has, therefore, stands dismissed. No costs.

9. As the First Appeal dismissed the Civil Application does not survive and is disposed of accordingly.

(AMIT BORKAR, J.)

(Note :- This order is modified as per dated 6th March, 2023 and the corrections in paragraph No.2 and 7 are shown in italicize)