

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO. 27 OF 2023

Special Recovery and Sales Officer and anr__ Vs. __ Shevam Jugalkishor Kothari

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.B.Gandhi, Advocate for the applicant
Mr. M.G.Sarda, Advocate for non-applicant

CORAM : AVINASH G. GHAROTE, J.
DATE : 30/06/2023

1] On 23.6.2023 the following position
was recorded.

It is contended that since the claim in the
plaint is for a declaration that the property
is not liable to be attached by the defendant
/applicant for the amount claimed to be
outstanding from the vendors of the
plaintiff/respondent, in view of the
attachment of the immovable property by
the present applicant under the provisions
of Rule 107 Sub-rule 9 of the MCS Rules,
the remedy available would be only to raise
an objection to the attachment under
Sub-rule 19(a) of Rule 107 of the MCS
Rules and therefore, the bar under Section
164 of the MCS Act would be attracted.
Reliance is placed upon Special Recovery

Officer/Sales Officer Dr. Annasaheb
Chougule Urban Co.Op. Bank Ltd. Vrs.
Suhas Balkrishna Shete and ors, 2014 (3)
Mh.L.J. 859.

2] Mr. Sarda. Learned counsel for the non-applicant/plaintiff concedes to the position that the remedy available to the plaintiff is to file an objection under Rule 107 (19) of the MCS Rules before the Recovery Officer, in view of which the bar under Section 163(3) of the MCS Act, would clearly be attracted and the suit filed would not be maintainable, in view of which the impugned order dated 22.10.2021 below Exh.12 is hereby quashed and set aside and the application below Exh. 12 is allowed.

3] Revision is allowed in above terms. No costs.

JUDGE

Rvjalit