



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

15 WRIT PETITION NO. 15040 OF 2023

WESTERN SPINNING MILLS PVT LTD KOLHAPUR THROUGH ITS
DIRECTOR

VERSUS

AYODHYA GINNING AND PRESSING FACTORY THROUGH ITS
PROPRIETOR AND OTHERS

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Advocate for the Petitioner : Mr. Tope Sambhaji Subhashrao

Advocate for Respondent No.1:Mr.P.R.Katneshwarkar h/f Mr.P.N.Kalani

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CORAM : ARUN R. PEDNEKER, J.

Dated : January 15, 2024

PER COURT :-

1. The present proceeding arises out of an execution of the decree dated 18/10/2021 for an amount of Rs.42,33,946/- @ of 12% interest per annum from 16/07/2015. In pursuance of the said decree passed, an execution petition was filed by respondent No.3 against respondents No.1 and 2 on 14/12/2021. In the execution application an attachment warrant dated 04/10/2023 was issued by the learned Civil Judge Senior Division, Ambad in Darkhast No.35/2023. On the attachment order being issued against the property i.e. spinning mills

machinery, building, labour houses, office, fire fighting machinery of Unit No.I and Unit No.II, the petitioner filed an application under Order 21 Rule 97 of the Code of Civil Procedure raising objection to the attachment and in the said application he had also filed an interim application for stay of the attachment. The interim prayer for stay is refused, in pursuance thereto the present petition is filed.

2. The learned Advocate appearing for the respondent submits that the petitioner has a remedy under Order 21 Rule 58 of the Code of Civil Procedure and an appropriate application if filed in that regard can be decided by the Court. As the present decree being a money decree, the attachment order can be resisted only by filing application under Order 21 Rule 58 of the CPC. In pursuance of the submission made, the learned Advocate appearing for the petitioner seeks leave to file appropriate application under Order 21 Rule 58 of the CPC. The present petition is disposed of with liberty to the petitioner to raise objection under Order 21 Rule 58 of the CPC. If such an application is filed, the executing Court to decide the same in accordance with law within a period of four weeks.

3. The attachment would remain on the property, however the

possession of the petitioner of the attached property will not be disturbed till application under Order 21 Rule 58 is decided. The petition is disposed of accordingly.

4. Liberty granted to raise objection within two weeks.

(ARUN R. PEDNEKER, J.)

vj gawade/-.