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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL(ST) NO. 19052 OF 2024
WITH
INTERIM APPLICATION NO. 10531 OF 2024
WITH
INTERIM APPLICATION NO. 10530 OF 2024**

Gharda Chemicals Limited through

Anil Chandrakant Bhosale,

R/o. Gharda Colony, Lote,

Taluka Khed, District Ratnagiri

... Appellant/Applicant

Versus

1. Rang Rasayan Partnership Firm

Registered under the Indian Partnership Act,

through its Partner Bipin Jayantilal Shah

R/o. Building No. 14, Raval Building,

520, New Rasta Peth, Pune-411 040.

2. Oxide & Specialities Ltd.,

having its address at F/1 MIDC Area,

Lote Parshuram, Taluka Khed, District

Ratnagiri.

AND

R-802, T.T.C. Industrial Area,

'D' Block, Turbhe Thane Belapur Road,

Mahape, Navi Mumbai 400 701,

Through its Chairman V.P. Goenka

3. Shri Brijmohan Rathi

(Oxide & Specialities)

Address-3A/103, Green Acres,
Lokhandwala Complex, Azad Nagar,
Andheri(West), Mumbai – 400 053.

4. Sangita Rathi,

Director (Oxides & Specialities Ltd.

Address- 3A/103, Green Acres,
Lokhandwala Complex, Azad Nagar,
Andheri(West), Mumbai -400 053.

5. Shri Prakash Selot,

Finance Controller of Oxides & Specialities

Ltd, Address -F 14, 3/1 Shrikrishna CHS,

Sector 22 Kopar Khairane, Navi Mumbai

... Respondents

WITH

SECOND APPEAL(ST) NO. 19056 OF 2024

WITH

INTERIM APPLICATION NO. 10592 OF 2024

WITH

INTERIM APPLICATION NO. 10590 OF 2024

Gharda Chemicals Limited through

Anil Chandrakant Bhosale,

R/o. Gharda Colony, Lote,

Taluka Khed, District Ratnagiri

... Appellant/Applicant

Versus

1. S.V.S. Chemical Corporation,

Registered under the Indian Partnership

Act, through its Partner Bipin Jayantilal
Shah R/o. Building No. 14, Raval
Building, 520, New Rasta Peth, Pune-
411 040.

2. Oxide & Specialities Ltd.,
having its address at F/1 MIDC Area,
Lote Parshuram, Taluka Khed, District
Ratnagiri.

AND

R-802, T.T.C. Industrial Area,
'D' Block, Turbe Thane Belapur Road,
Mahape, Navi Mumbai 400 701,
Through its Chairman V.P. Goenka

3. Shri Brijmohan Rathi
(Oxide & Specialities)
Address-3A/103, Green Acres,
Lokhandwala Complex, Azad Nagar,
Andheri(West), Mumbai – 400 053.

4. Sangita Rathi,
Director (Oxides & Specialities Ltd.
Address- 3A/103, Green Acres,
Lokhandwala Complex, Azad Nagar,
Andheri(West), Mumbai -400 053.

5. Shri Prakash Selot,
Finance Controller of Oxides & Specialities
Ltd, Address -F 14, 3/1 Shrikrishna CHS,
Sector 22 Kopar Khairane, Navi Mumbai

... Respondents

Mr. Surel Shah, Sr. Counsel, Mr. Chaitanya Nikte a/w. Mr. Shehzad A.K. Najam-es-sani, Senior Advocate and Ms. Pooja Shah, Associate i/b. Maneksha & Sethna, for Appellant/Applicant in both SAs & IAs.

Mr. A. Kumbhakoni. Senior Counsel, a/w. Mr. S.R. Nargolkar, Ms. Isha Agarwal i/b. Mr. Suraj S. Ghogare, for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 20th AUGUST 2024

ORAL JUDGMENT:

1. Learned senior counsel appearing for the respective respondent no.1 (“decree holder”) raised a preliminary objection that the second appeals are not maintainable as the orders impugned in the appeals filed in the district court were passed on the applications for stay. He submits that there is no final adjudication done by the executing court on the objections filed by the appellant. Heard learned senior counsels for the parties. Second Appeal raises the following substantial questions of law:

- I) Whether the applications at Exhibits 78 and 79 filed by the appellant in the respective execution proceedings could have been decided as objections filed under Rule 58 of Order

XXI of the Civil Procedure Code, 1908 ('CPC')?

II) Can the orders passed on the applications at Exhibits 78 and 79 in the respective execution proceedings be termed as an adjudication as contemplated under Rule 58 of Order XXI of CPC?

III) Whether the First Appeals preferred by the appellants challenging the respective orders passed by the executing court were maintainable on the ground that the orders passed below Exhibits 78 and 79 would amount to a decree in view of sub-rule (4) of Rule 58 of Order XXI of CPC?

2. Mr. Kumbhakoni learned senior counsel appearing for respective respondent no.1 in both the Second Appeals waives notice for final disposal of the Second Appeals on the aforesaid questions of law. Since a short point concerning the aforesaid questions of law is involved in the Second Appeals, by consent, both the Second Appeals are taken up for final disposal.

3. By order dated 25th July 2024, the appellant ("objector") was granted leave to amend the cause title of the Second Appeals to add the judgment debtors as party respondents. Accordingly, respondents nos. 2 to 5 were added in the Second Appeals. However, the said added respondents were not a party to the First

Appeals and were also not heard at the time of deciding the appellant's application before the executing court. Hence, it is not necessary to issue notice to them for the final disposal of the second appeals.

4. The learned senior counsel for the appellant submits that the appellant had filed the respective applications at Exhibits 78 and 79, for stay to the attachment order issued by the executing court on 1st December 2023. He submits that the appellant filed the respective applications raising objections to the attachment order on the ground that the appellant was a bonafide purchaser for value without notice; hence, the decree under execution could not have been executed against the appellant. He further submitted that the respective suits for recovery of money were decreed on 27th February 2009 for an amount of Rs. 9,90,373/- and Rs. 19,71,899/- respectively with interest.

5. Learned senior counsel for the appellant further submits that on 25th September 2012, the execution proceedings were initiated by the respective decree holder. On 4th November 2017, the judgment debtor executed an MOU in favour of the appellant, and on 26th February 2019, the Deed of Assignment was executed in

favour of the appellant. The learned senior counsel for the appellant thus submitted that in view of the registered deed of assignment, the right, title and interest in the property sought to be attached was transferred in the name of the appellant. He submits that the appellant was unaware of the suit filed against the judgment debtor and the decree passed in favour of the respective plaintiff, which was under execution. He submits that it was only when the attachment order was sought to be executed that the appellant learnt about the execution and the decree and, hence, filed the respective applications at Exhibits 78 and 79 before the executing court, praying for the stay of the attachment order.

6. Learned senior counsel for the appellant further submits that separate applications, under Rule 58 of Order XXI of CPC, are filed by the appellant in the executing court raising objections for attachment of the appellant's property. He submits that the said objections are still pending adjudication. He further submits that since the appellant's applications, i.e. Exhibits 78 and 79, were filed with a prayer to stay the order of attachment, all the necessary objections were raised on the ground that the appellant is a bonafide purchaser for value without notice and hence the order of attachment could not have been executed in respect of the

appellant's property. He further submits that the executing court decided both applications by adjudicating the rival contentions of the parties on merits. Hence, the orders passed below Exhibits 78 and 79 were challenged by filing regular first appeals in view of sub-rule (4) of Rule 58 of Order XXI of CPC.

7. The learned senior counsel for the appellant further submits that the first appeals were heard and decided as regular first appeals by considering the rival contentions of the parties on merits. Hence, the appellant had no option but to file present Second Appeals. He further submits that since the appellant's substantive applications under Rule 58 of Order XXI of CPC are still pending. Hence, if the orders impugned in the Second Appeals are quashed and set aside, the appellant would be agreeable to challenge the orders below Exhibits 78 and 79 by filing appropriate proceedings. He further submits that only because the applications at Exhibits 78 and 79 were adjudicated on merits, the same were construed as a final adjudication under Rule 58 of Order XXI of CPC, and hence, the first appeals were filed. Thus, the appellant had to file the present Second Appeals to challenge the same. He, thus, submits that the impugned judgments and orders be set aside to enable the appellant to challenge the order passed below Exhibits 78 and 79 by

filing appropriate proceedings. He, therefore, submits that the aforesaid questions of law be answered accordingly and the impugned judgment and order passed by the District Court be quashed and set aside.

8. Learned senior counsel appearing for the decree holder submits that the prayers in the application at Exhibits 78 and 79 were only seeking a stay to the order of attachment. He, thus, submits that the orders passed by the executing court, which are the subject matter of these Second Appeals, cannot be construed as an adjudication under Rule 58 of Order XXI of CPC. He submits that sub-rule (4) of Rule 58 of Order XXI of CPC would not be applicable to the orders passed under Exhibits 78 and 79. He submits that there was no order which would have the force of a decree. Hence, the first appeals preferred by the appellant were itself not maintainable. He, thus, submits that since the first appeals were not maintainable, even the present Second Appeals are not maintainable.

9. Learned senior counsel for the decree holder further submits that the appellant has already filed substantive applications for adjudication under Rule 58 of Order XXI of CPC. Hence, these Second Appeals cannot be entertained as an appeal challenging

any adjudication under Rule 58 of Order XXI of CPC. He, therefore, submits that these second appeals be dismissed as not maintainable.

10. I have considered the submissions made on behalf of the parties. On perusal of the papers of both the Second Appeals, it is clear that the applications filed by the appellant under Exhibits 78 and 79 were filed seeking a stay to the order of attachment issued for the execution of the money decree in favour of the decree holder (respondent no. 1). However, the applications raised all the substantive grounds on the right, title and interest of the appellant. However, the application specifically prayed for only a stay to the order of attachment. The reasons recorded by the executing court indicate that the applications were rejected by dealing with the objections raised to the order of attachment on the ground of the appellant's claim of right, title and interest in the property under attachment.

11. It appears that in view of the reasons recorded by the executing court, the appellant treated the order as an adjudication under Rule 58 of Order XXI of CPC and filed First Appeals in view of sub-rule (4) of Rule 58 of Order XXI. A perusal of the judgment of the First Appellate Court indicates that both parties treated the

appeals as regular appeals against the order of the executing court; hence, no adjudication was made on the maintainability of the first appeals. Thus, in view of the observations made by the First Appellate Court in paragraph 21 of the impugned judgment., the first appeals were heard on merits by considering the order of the executing court as an order of adjudication under Rule 58 of Order XXI of CPC. The reasons recorded by the First Appellate Court are on merits in dealing with the rival contentions of the parties on the appellant's claim of right, title, and interest in respect to the property under attachment. However, if the applications filed by the appellant are considered, they appear to be only for a stay of the order of attachment.

12. Even in the present appeals, the appellant has raised a specific ground that the substantive applications filed by the appellant under Rule 58 of Order XXI of CPC are still pending. Thus, adjudication under Rule 58 of Order XXI of CPC is to be decided based on the substantive objections raised by the appellant; hence, the order passed below Exhibits 78 and 79 cannot be construed as an adjudication under Rule 58 of Order XXI of CPC. Thus, the orders passed by the executing court would not have a force of decree as contemplated under sub-rule (4) of Rule

58 Order XXI of CPC. Thus, in view of the contents of the applications at Exhibits 78 and 79 and the reasons recorded by the executing court, the order cannot be said to be an adjudication as contemplated under Rule 58 of Order XXI of CPC. Hence, the orders passed below Exhibits 78 and 79 would not have the force of decree as contemplated under sub-rule (4) of Rule 58 of Order XXI of CPC.

13. Once it is held that the orders passed below Exhibits 78 and 79 would not have the force of a decree, the first appeals preferred by the appellant would not be maintainable. Thus, the aforesaid questions framed in the Second Appeals are required to be answered accordingly. The adjudication made by the executing court cannot be termed as adjudication under Rule 58 of Order XXI of CPC. Thus, the appellant's first appeals cannot be held to be maintainable as there was no decree as contemplated under sub-rule (4) of Rule 58 of Order XXI of CPC. Hence, for the reasons recorded above, the impugned judgment and decree passed by the First Appellate Court needs to be set aside. In view of setting aside of the impugned judgment and decree passed by the First Appellate Court in both the Second Appeals, the Appellant would be at liberty to challenge the orders passed by the executing court below

Exhibits 78 and 79 by adopting appropriate proceedings as permissible in law.

14. Learned senior counsel for the appellant submits that on 20th January 2024, the executing court had granted a stay to the order of attachment. He submits that to enable the appellant to adopt appropriate proceedings to challenge the rejection of the applications at Exhibits 78 and 79, the amount deposited by the appellant in the executing court securing the decretal amount may not be released for a period of four weeks from today.

15. Learned senior counsel for the decree holder submits that the next date in the executing court is 2nd September 2024; hence, it is always open for the appellant to file an appropriate application before the executing court. He, therefore, opposes the grant of relief as prayed by the appellant.

16. There is no dispute that the decretal amount is already secured by the appellant by depositing the amount in the executing court. The appellant's substantive applications raising objections under Rule 58 of Order XXI of CPC are still pending. Hence, if the amounts are released at this stage, the appellant's right will be prejudiced. Hence, to enable the appellant to file appropriate proceedings to challenge the orders rejecting the applications at

Exhibits 78 and 79, the amount already deposited by the appellant in the executing court shall not be released for a period of four weeks from today.

17. Hence, both the Second Appeals are partly allowed by passing the following order:

- i) The impugned judgments and decrees dated 6th May 2024, passed in Regular Civil Appeal Nos. 14 of 2024 and 15 of 2024, are quashed and set aside.
- ii) Regular Civil Appeal Nos. 14 of 2024 and 15 of 2024 are dismissed as not maintainable.
- iii) The appellant would be at liberty to adopt appropriate proceedings to challenge the orders dated 28th March 2024, passed by the Joint Civil Judge, Khed, below Exhibits 78 and 79 as permissible in law.
- iv) It is clarified that this court has not examined the rival contentions on the merits of the application at Exhibits 78 and 79. Hence, rival contentions on merits between the parties are kept open.
- v) To enable the appellant to file appropriate proceedings to challenge the orders rejecting the applications at Exhibits

78 and 79, the amount already deposited by the appellant in the executing court shall not be released for a period of four weeks from today.

18. The Second Appeals are partly allowed in the aforesaid terms. In view of the disposal of the Second Appeals, all the pending Interim Applications are disposed of as infructuous.

(GAURI GODSE, J.)

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signed by
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