



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

WRIT PETITION NO.5310 OF 2024

JOHN DAVID GOGULA & ORS. ..PETITIONERS

VS.

THE STATE OF MAHARASHTRA

THR. G.P. & ORS. ..RESPONDENTS

Adv. Ashok Mishra a/w. Adv. Shubham Mishra for petitioners.

Adv. Bhupesh V. Samant for respondent nos. 3 & 4.

Mrs. T. D. Goswami, AGP for State.

**CORAM : A.S. CHANDURKAR &
 RAJESH S. PATIL, JJ**

DATE : 2nd August 2024.

ORAL JUDGMENT : (PER : A. S. CHANDURKAR, J.)

- 1.** Rule. Rule is made returnable forthwith.
- 2.** The grievance raised by the petitioners is with regard to the action initiated by the respondent nos. 2 to 4 in attaching the salary accounts of the petitioners. It is their case that the respondent no.6 is the principal borrower and the petitioners and the respondent nos.2 to 4 stood as guarantors. Recovery certificate came to be issued on 31st March 2017 in proceedings initiated by the respondent nos.2 to 4. Pursuant thereto the respondent nos. 2 to 4 took steps to recover the requisite amounts. In that process, the salary accounts of the petitioners came to be attached.

3. Heard the learned counsel and perused the documents on record. It is not in dispute that the attachment of the salary accounts of the petitioners commenced from 2017-18. As of today, an amount of Rs.4,35,000/- has been recovered. In the affidavit-in-reply filed by the respondent no.3, it has been stated that as of 30th June 2024, an amount of Rs.33,76,441/- with interest is still recoverable. The attachment orders in question were issued on 23rd December 2017. The period of more than twenty-four months has since lapsed from such attachment. The attachment of the salary beyond twenty-four months would not be permissible in view of the Section 60(i) of the Code of Civil Procedure, 1908. It is also not in dispute that the immovable property that was offered by way of security has been attached by the respondent nos.2 to 4 and attempts to sell that property in public auction are being undertaken.

4. We find in these facts that it would be necessary for respondent nos.2 to 4 to execute the recovery certificate in accordance with law. The immovable property being already attached and taken possession of, the same can be proceeded against. The attachment of the petitioners' salary accounts after expiry of twenty-four months does not appear to be legally justified.

5. In view of aforesaid, the following order is passed:-

(I) The attachment of the petitioners' salaries pursuant to the order dated 31st March 2017 is lifted since the same could have continued only for twenty-four months. In other words, their salaries would no longer be attached.

(II) Respondent nos.2 to 4 are free to take further steps for recovery of the dues by proceeding against the immovable property of the borrowers/guarantors for recovery of the balance amount of dues.

6. Rule is disposed of in the aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]