

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

FIRST APPEAL NO.1954 OF 2024

Nikhil Wadke ... Appellant
V/s.
Frenny F. Bhadha & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.15705 OF 2024**

**AND
FIRST APPEAL NO.1955 OF 2024**

Nikhil Wadke ... Appellant
V/s.
Freddy K. Bhadha & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.15708 OF 2024**

**AND
FIRST APPEAL NO.1968 OF 2024**

Nikhil Wadke ... Appellant
V/s.
Sabina Khana & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.15742 OF 2024**

Mr. Anil D'Souza, Sanket Mungale, Vinay A., E. Tuscano i/by Kartik Vig for the Appellants in all FAs.

Mr. V. S. Kapse for Respondent No.1 in all FAs.

Mrs. Shonali Kedar Dighe, Commissioner for Taking Accounts, High Court (Original Side), Bombay for Respondent No.4 is present.

CORAM : ARIF S. DOCTOR, J.

DATE : 18TH DECEMBER 2024

P.C. :

1. Today, the Commissioner for Taking Accounts, High Court (Original Side), Bombay submits a report dated 18th December 2024. The copies of the said report to be made available to all parties.

First Appeal No.1955 of 2024

2. The present First Appeal impugns an order dated 24th September 2024 passed by the City Civil Court at Mazgaon by which the Appellant's Chamber Summons being Chamber Summons No.452 of 2022 filed in Execution Application No.980 of 2013 in Summary Suit No.3027 of 2012 came to be dismissed.

3. The Respondent No.1 in the First Appeal was the Plaintiff in the said Suit filed admittedly against Respondent No.2, which is admittedly also a

Private Limited Company. The said Suit was decreed in favour of Respondent No.1(Plaintiff) and in execution proceedings, that have been adopted thereafter, the flat being Flat No.51, Sun Ville CHS Limited, Opp Infant Jesus School, Off Chincholi Bunder Road, Malad West, Mumbai – 400 064 (*‘the said flat’*) has been attached.

4. It is the contention of Learned Counsel for the Appellant that the said flat was purchased from one Mrs. Valbai Kanji Patel and was not asset of the Second Respondent and that the said flat could therefore never have been attached in the execution proceedings since the same was not property of the Defendant Company. Learned Counsel submits that Respondent No.1 in the Suit had not taken out any application in the nature of Order 38 Rule 5 of the Code of Civil Procedure seeking attachment of any of the assets of the First Respondent and thus the said flat having been purchased by the Appellant, title of the same had also vested in the Appellant and, therefore, the same could not be attached. Learned Counsel has placed reliance upon a judgement of this Court in the case of ***Belarmina Gowda vs. Ranjith Nath***¹ to submit that it is well settled that a company is an independent entity and the decree cannot be executed against any individual or director of a company. He further submitted that the judgement also records that it was for the parties taking execution to

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point out as to what the assets of the company against which the decree can be executed and such details can be obtained by the decree holder from the office of the Registrar of Companies (RoC). He submits that in the present case Respondent No.1 has infact various other assets however Respondent No.1 is proceeding only against the said flat.

5. Learned Counsel for Respondent No.1 (Plaintiff in the Suit) submits that since the Suit proceeded ex parte, there was never any occasion for the Plaintiff to file an Order 38 Rule 5 Application.

6. This is a submission which only needs stated to be rejected since the filing of an Application under Order 38 Rule 5 would depend upon whether infact a Defendant was acting in a manner which would defeat any decree that would be passed in the Suit. Hence, the submission that because the Defendant did not appear in the Suit, no such Application was filed, is, to my mind, untenable. In any view of the matter this issue is not one that is relevant in the present case. What is infact relevant and is to be determined is as to whether the said flat was an asset of the Respondent Company on the date on which the decree was passed.

7. In this regard Learned Counsel for Respondent No.1 submitted that the Trial Court in rejecting the Application had correctly noted that the gift of the flat by one of the directors to his mother who in turn said to have been sold the said flat to the Appellant was something that was fishy since normally the parents who can gift over something to their children. He submitted that two previous applications were also filed by the mother of the director for lifting of attachment of the said flat which applications came to be dismissed in the year 2016 and 2019. He submits that it was only five years after the second Chamber Summons was dismissed that the Appellant had filed the present Chamber Summons.

8. Having due regard to the submissions made and the facts of the case, in my view, there is no consideration of whatsoever in the order though it is the submission of Learned Counsel for the First Respondent that all this was placed before the learned trial court. It would have to be first seen that the said flat is in fact an asset of the Second Respondent Company or not before proceeding for execution.

9. Learned Counsel for Respondent No.1 at this stage submitted that an Affidavit in Reply would be filed placing all these facts on record. He also

submits that issue of ownership of the said flat has been decided by the City Civil Court in an ancillary proceedings and this fact shall also be placed before the Court in the said Affidavit. Affidavit in Reply to be filed within a period of three weeks from today. Affidavit in Rejoinder, if any, to be filed one week thereafter.

10. Stand over to 22nd January 2025 for hearing.

11. Until the next date, it is made clear that if any execution proceedings are to proceed, there shall be no opening of the tender in question.

12. Since Learned Counsel for the parties submit that the facts in First Appeal Nos.1954 of 2024 and 1968 of 2024 are identical, this order shall operate as a common order in that Appeals also.

(ARIF S. DOCTOR, J.)