



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

1 WRIT PETITION NO. 5357 OF 2025

BHIMASHANKAR NARAYAN GADEWAR AND ANOTHER
VERSUS
OSMANABAD JANATA SAHAKARI BANK LTD THROUGH ITS BRANCH
MANAGER AND OTHERS

Mr. P.R. Katneshwarkar, Sr. Advocate i/b. Mr. A.A. Fulfagar, Advocate for the petitioners.

Mr. S.B. Choudhari, Advocate for respondent No.1.

Mr. Sachin Deshmukh h/f. Mr. Ramchandra Patil, Advocate for the intervenor.

CORAM : KISHORE C. SANT, J.
DATE : 05.05.2025

PC :-

01. Heard by consent of the parties for final disposal.

02. The petitioners - guarantors have approached this Court challenging an order dated 17.03.2025 passed by the executing Court in RD No. 127 of 2009 (Exh. 310). This order is passed on the application seeking arrest warrant against present petitioners. The learned Trial Judge in the order has recorded that in view of the findings in Regular Civil Suit No. 11 of 2009, rights on the property i.e. Gat No. 81/1/1 are not established by the petitioners and therefore the property cannot be attached. It is further made clear that in such circumstances, the list of

property of JD Nos. 1 to 3 are sufficient enough to discharge the liability and be auctioned. In spite of such auction, if no amount could be recovered, JD Nos. 1,3 and 5 be put in civil prison. The opponents in the execution proceeding is directed to give details of the properties which could be auctioned till the next date.

03. Learned Sr. Advocate Mr. Katneshwarkar for the petitioners vehemently argued that the petitioners are ready to bring purchasers for the property Gat No.81/1/1. This one property itself is sufficient to discharge entire loan liability. Unless all the efforts are made to dispose of the properties belonging to the petitioners, no arrest warrant could have been issued. He thus submits that the order impugned is illegal. To resort to such order, is last the remedy and it is necessary to make every efforts to auction the land. It submitted that in First Appeal the appellant and some of the respondents have entered in compromise. In such situation, he submits that no arrest warrant could have been issued and prays for allowing the writ petition by setting aside the impugned order.

04. Pursuant to what transpired in this Court on last date, petitioner – Bhimashankar has filed an affidavit stating that there is mortgage-deed executed in favour of the bank by borrower and the

guarantor and it is for that purpose, he cannot auction the property. He has further stated that he would bring purchasers, in case bank gives no objection to the petitioners to sell the mortgaged property.

05. Mr. Choudhari appearing for the respondent-bank opposes this petition. He submits that the bank has clearly pointed out to the executing Court that as to how the property cannot be sold in auction. Even revenue record does not show names of the petitioner and since there is litigation pending, it is difficult to auction the land. He, thus, prays for rejection of the petition.

06. Learned Advocate Mr.Deshmukh for the added respondents vehemently opposes the petition. The added respondents also claim to have interest in the property i.e. Gat bearing No. 81/1/5, whereas the petitioners' property is Gat bearing No. 81/1/1. Learned Advocate for the applicant submits that there are already orders passed by this Court. One order is passed in FA No. 715 of 2006, wherein the petitioners in the writ petition were respondent Nos. 1 and 2. This Court in the said First Appeal granted interim order restraining respondent No.3 therein i.e. Avinash Patil – principal borrower from creating third party interest in the suit property till the respondent files reply. The learned Advocate for the

applicants makes statement that now First Appeal is admitted by continuing the interim relief. Second order he points out is the order passed by this Court in Letters Patent Appeal, arising out of order passed by this Court in Writ Petition No. 3810 of 2010, whereby there is stay granted to the judgment impugned therein. Said litigation is arising out of mutation entries. Later on said writ petition was admitted, however, without interim relief. In the Letters Patent Appeal, this Court directed to maintain status-quo by its order dated 18.01.2016. There is yet another Writ Petition bearing W.P. No. 3119 of 2024 pending in this Court, in which, this Court has granted ad-interim stay to the order dated 31.01.2024 passed by the District Judge, Latur in MCA No. 14 of 2017. In the said appeal the Appellate Court has reversed the order of injunction granted by the Trial Court.

07. Heard learned Advocates for the parties. The order of the executing Court is clear. It is clearly recorded that unless all the efforts are taken, no arrest warrant be issued. However, later on, the executing Court has issued arrest warrant, by operative order. Though the observations and the order appear to be contradictory, it is seen that the Court has made observations in view of the position pointed out to the Court. All the orders passed by this Court and the fact that various other

litigations are pending. The bank inspite of its desire to auction the land, could not sell the land. This Court also finds substance in the submission that unless there is name shown of the petitioner over the land in the revenue record, no purchaser would come forward to purchase the land. Though learned Sr. Advocate submits that with all these, there are purchasers in the market, who are still ready to purchase the land and it would be his responsibility to bring such purchaser for that purpose. There is also undertaking to that effect dated 30.04.2025. However, with the background above, it seems to be not possible.

08. In view of the above submissions and the orders passed by this Court in respect of the said property, this Court finds that it would not be proper to allow the petitioners to dispose off the land. The injunction is in respect of the property. Though it is tried to be agitated by the petitioners that the injunction is only against principal borrower, this Court is not preapred to accept this argument. If the petitioner is allowed to sell the land, it would be contrary to the orders already passed by this Court, which are referred above. It is pointed out that in the First Appeal, now there is compromise between the appellant and some of the respondents. However, it is seen that the interim order is still in force. The petitioner may try to dispose off any other property, which is not

subject matter of any of the litigation.

09. It further needs to be noted that the petitioner is very much party to the First appeal and the earlier writ petitions. In spite of this being the position, he has not pointed out orders passed by this Court to the executing Court. This Court finds force in the arguments of learned Advocate Mr. Deshmukh that it was necessary for the petitioner to point out earlier orders to the executing Court. Since the observations of the order passed by the executing Court and the operative order appear to be some-what contrary, it would be for the petitioner to deposit the amount within eight weeks by putting any other property to sell. The effect of the impugned order is suspended for eight weeks.

10. Thus, this writ petition is disposed off by suspending the effect of the impugned order for a period of eight weeks from today.

[KISHORE C. SANT, J.]