

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

932 WRIT PETITION NO. 7529 OF 2023

TEJAS RAVINDRA MAGAR
VERSUS
SINDHUBAI RAVINDRA MAGAR AND ANOTHER

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Advocate for the Petitioner : Mr. Anshuman Deshmukh h/f Mr.
Deshmukh Mahesh S.

Advocate for Respondent No. 1 : Mr. P.U. Gujarathi h/f Mr. Latange
Vijay Prabhakarrrao

Advocate for Respondent No.2 : Mr. Pote Ketan D.

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CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : 05.12.2025

PER COURT :

1. Heard the learned Counsel for the respective parties.
2. By way of present petition, the petitioner assails the order dated 06.04.2023 passed below Exh. 45 by the 11th Jt. Civil Judge Senior Division, Ahmednagar, in R.D. No. 222 of 2019 whereby, the objection filed by the petitioner came to be rejected.
3. The learned Counsel for the petitioner submits that the petitioner filed an application under Order XXI Rule 58 of the Code of Civil Procedure by raising an objection that the attached property was given to the petitioner by way of a Gift Deed and pursuant to the said Gift Deed the petitioner's mother and sister are in possession of the suit property. By way of this application the petitioner objected the execution of the decree. He further submits that the application was not properly

considered by the learned Executing Court and it was rejected without giving proper reasons.

4. The learned Executing Court while considering relevant objection raised by the petitioner recorded findings in paragraph No. 6 and 7 which are reproduced herein below :

“5. The property attached is a bungalow by name “Tejas”. Attachment has been made by detailed order dated 21.12.2022. In said order this Court has made reference of the conditional stay granted by the Hon’ble High Court in Civil Application No. 11400/2021. Stay was granted by the Hon’ble High Court on the condition of depositing 75% of the arrears of the maintenance amount in the Trial Court within four weeks of the order. Said condition was not fulfilled by the Judgment Debtor. On the contrary, he gifted the property in question to his son born out of second marriage.

6. While deciding the attachment application, in paragraph No. 7 of the order, this Court has specifically observed that the transfer by way of gift to his son by the Judgment Debtor is a fraudulent transfer. Said observation was made by referring the judgment of the Hon’ble High Court in the case of Shri Carlota Fernandes (Supra). The attitude of Judgment Debtor in not paying any amount due towards maintenance and his act of gifting the bungalow to son during pendency of this execution proceeding, in the considered opinion of this Court, was found to be fraudulent as aforesaid. The circumstances aforesaid prove it to be so.

7. Learned Advocate for objector submitted that in view of judgment of the Hon’ble High Court in Central Bank of India (Supra) claim of objector needs to be adjudicated. In said case the order passed by Civil Judge, Senior Division, Margao was found to be passed on wrong assumption that order passed in the suit was an order of attachment. In said peculiar circumstances the application under Order 21 Rule 58 of the Code of Civil Procedure was directed to be adjudicated afresh.

In the case at hand, as aforesaid, the gift of the property attached has been found to be fraudulent and therefore, order of attachment has been passed. The arguments of objector and Decree Holder have been heard at length. Thus, the objection and the submissions made by both the sides have been considered in the light of detailed order of attachment earlier passed. The transfer by way of gift being fraudulent cannot be allowed to come in the way of execution of the decree. Hence, the attachment cannot be set aside. The prayer of objector, for reasons aforesaid, cannot be allowed. ”

5. Learned Counsel for respondent No.1 submits that the Gift Deed was executed only with a view to defeat the claim of the respondent No. 1 and to delay the execution proceeding. The said Gift Deed is nothing but a fraud played by the petitioner.

6. I have gone through the order dated 06.04.2023 passed below Exh. 45 by the learned Executing Court. Considering the findings recorded by the learned Executing Court, I do not find any reason to interfere with the said order.

7. In view thereof, the Writ Petition is dismissed. No order as to the costs.

8. Interim relief granted earlier to continue for six weeks from today.

(SIDDHESHWAR S. THOMBRE, J.)