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

**WRIT PETITION NO. 307 OF 2006
WITH
CIVIL APPLICATION NO. 168 OF 2010**

Deepak Vishwasrao Jadhav & Anr. .. Petitioners

Versus

Rafik Gulab Bagwan & Anr. .. Respondents

Mr. Sharad Bhosale i/by Mr. Dilip Bodake for petitioners.

CORAM: ALOK ARADHE, CJ.

DATE: 28th JULY, 2025

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ORAL ORDER:

1. In this petition filed under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 6th January, 2001 by which application filed by decree holder for attachment of the immovable property has been allowed and the premises where the petitioners are running country liquor shop has been attached in execution of the judgment and decree dated 10th October, 1994 passed in Regular Civil Suit No. 160 of 1994.

2. Facts giving rise to filing of the instant writ petition, in nutshell, are that respondent no.1/plaintiff filed Regular Civil Suit No. 160 of 1994 for recovery of sum of Rs.15,000/-. The trial court vide judgment and decree dated 10th October, 1994 decreed the aforesaid suit ex-parte and directed the defendant to pay a sum of Rs.15,000/- to the plaintiff along with interest at the rate of 6% per annum.

3. The respondent no.1/decreed holder filed execution proceedings for execution of the decree. In the aforesaid execution proceeding, an order of attachment was passed in respect of the property belonging to the petitioners where the the petitioners are running country liquor shop. The petitioners, thereupon, filed an application for direction that the decree holder be directed to correct the description of the property and to release the property belonging to the petitioners, which was attached in execution of the decree. The executing court by the impugned order dated 3rd January, 2006 rejected the aforesaid application. In the aforesaid factual background, this writ petition has been filed.

4. Learned counsel for the petitioners submitted that the executing court ought to have appreciated that the petitioners are not party to the civil suit and there is no decree passed against them. Therefore, the property belonging to the petitioners cannot be attached in execution of the decree.

5. None has appeared on behalf of the respondents. A Bench of this Court vide order dated 23rd February, 2007 had admitted the writ petition and granted ad-interim order, which is continued till today. It was however clarified that the ad-interim order does not prevent the decree holder from attaching other properties of the Judgment Debtor in accordance with law.

6. On perusal of the proceeding before the trial court, it is evident that the petitioners are not party to the civil suit and are not judgment debtor and, therefore, in execution of the decree, which was passed in favour of the decree holder, property belonging to the petitioners cannot be attached. The

petitioners in compliance of the order passed by this Court had deposited a sum of Rs.24,925/- in the Trial Court.

7. For the aforementioned reasons, impugned order suffers from error apparent on the face of the record. It is accordingly quashed and set aside. The Trial Court is directed to refund the amount deposited by the petitioners to the petitioners along with accrued interest, if any.

8. Accordingly, writ petition is disposed of.

9. Interim Application does not survive and same is also disposed of accordingly.

10. Let copy of this order be forwarded to the Trial Court forthwith.

(CHIEF JUSTICE)