

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7392 OF 2025**

Gharda Chemicals Limited
a company registered under the
companies Act, 1956 having its
registered office at Gharda House,
48, Hill Road, Bandra West
Mumbai – 400 050 and one of its
Factories at Plot – F-1, Lote,
Parshuram Industrial Estate,
Village : Awashi, Taluka Khed,
District Ratnagiri.

...Petitioner

Versus

S.V. S Chemicals Corporation
Registered under the Indian
Partnership Act, through its Partner
Bipin Jayantilal Shah
Age about 65 years, Occu:--
R/o Building No. 14, Raval Building.
520, New Rasta Peth, Pune-411 040.

...Respondent
(Ori. Decree Holder)

...

Advocates for the Petitioner : Mr. Surel Shah Senior Advocate a/w Mr.
Chaitanya B. Nikte through VC i/b Maneksha and Sethna a/w S.A.K.
Nagam-es-Sani

Advocate for Respondent : Mr. Yuvraj Narvankar a/w Rahul Patil

...

CORAM : S. G. CHAPALGAONKAR, J.

Reserved on : 18th SEPTEMBER, 2025.

Pronounced on : 06th NOVEMBER, 2025.

FINAL ORDER:-

1. The petitioner impugns order dated 05.05.2025 passed below Exhibit-141 in Special Darkhast No.28 of 2018, thereby petitioner's prayer is declined for framing of appropriate issues in light of directions issued by this Court in Writ Petition No.14053 of 2024.

2. Brief facts giving rise to present writ petition can be summarized as under :-

The respondent-S.V.S. Chemicals Corporation had instituted Special Civil Suit No.48 of 2005 for recovery of amount against Oxide and Specialties Ltd and others. On 27.02.2009, suit is decreed directing defendant to pay an amount of Rs.9,90,373/- alongwith interest @ 21% p.a. from the date of filing suit. On 25.09.2012, respondent-SVS chemical Corporation filed Special Darkhast No.40 of 2012 before Civil Judge Senior Division at Ratnagiri. On 02.01.2014, defendant caused appearance and submitted Miscellaneous Application for dismissal of Darkhast on ground that decree cannot be executed, as defendant has been declared as sick unit by BIFR under Sick Industrial Companies (Special Provisions) Act, 1985, hence, decree is not executable unless consent is obtained from BIFR. In pursuance to application below Exhibit-30, execution was stayed. On 04.11.2017, petitioner entered into Memorandum of Understanding (MOU) with defendant/Oxide and Specialties Ltd. for sale of plot no.F-1. On 26.02.2019 deed of assignment came to be registered and petitioner paid an amount of Rs.24 crores to defendant. Meanwhile, execution came to be transferred to Court at Khed and renumbered as Special Darkhast No.28 of 2018

3. On 01.03.2021, respondent/decreed holder filed an application below Exhibit-32 for vacating stay of execution proceeding since vide

Gazette Notification SO No.3568 (E) dated 01.12.2016 Sick Industrial Companies (Special Provisions) Act, 2003 came into force. Similarly, respondent/decreed holder filed an application below Exhibit-45 for attachment of subject property of defendant. On 17.08.2023, Executing Court vacated stay and issued warrant under Order XXI Rule 30 of Code of Civil Procedure for attachment of property and sale for recovery of amount.

4. On 13.09.2023 Bailiff reported that property was sold to petitioner. Eventually, respondent/decreed holder filed an application Exhibit-67 for issuance of warrant of attachment against petitioner/purchaser. The said application was allowed. On 09.02.2024, petitioner/purchaser filed an application under Order XXI Rule 97 of the Code of Civil Procedure below Exhibit-84 and one more application at Exhibit-94 under Order XXI Rule 58. On 28.03.2024, petitioner's application for stay of proceeding pending objection was rejected observing that petitioner cannot be treated as bonafide purchaser. On 21.06.2024, warrant of attachment and sale was issued vide order passed below Exhibit-111 and proclamation of sale of subject property was issued. On 16.08.2024, petitioner filed application for leave to deposit decretal amount of Rs.49,07,298/- below Exhibit-122 and petitioner has also filed Writ Petition No.14053 of 2024 impugning order issuing warrant of attachment and order passed below Exhibit-78, so also order passed below Exhibit-111

issuing proclamation of sale. The said writ petition is disposed of vide order dated 15.01.2025, thereby removing attachment and directing Executing Court to decide fundamental question (“whether decree is liable to be executed against subject property in hands of petitioner?”). It is further directed that withdrawal of the amount deposited by the petitioner shall be subject to the decision on aforesaid issue. It is further directed that pending applications filed by the petitioner before the Executing Court shall be decided in light of the core question in controversy in accordance with law.

5. In pursuance to aforesaid order, petitioner filed an application below Exhibit 141 before Executing Court for framing of the issues and clubbing of pending applications Exhibit 84, 94 and 98. Executing Court rejected petitioner’s applications, particularly, prayer for framing the proposed issues and directed the parties to advance arguments on the question as framed by this Court and other pending applications below Exhibit 84, 94, 98 and 122.

6. Mr. Surel Shah learned Senior Advocate appearing for petitioner would submit that Executing Court rejected petitioner’s application Exhibit 141 for framing of proposed issues on erroneous count, so also made erroneous observations that pending applications filed by petitioner have rendered infructuous. He would submit that Executing Court has erroneously observed that section 52 of Transfer of Property Act would apply to money decree, which reflects

predetermined adjudication on contentious issues, which is yet to be addressed. According to Mr. Shah, issue as to applicability of section 52, particularly when property was not subject matter of recovery suit and its transfer was unconcern with subject matter of the suit will have to be adjudicated upon. The petitioner had therefore proposed to frame relevant issues to determine as to whether section 152 would apply to execution of proceedings and petitioner can seek protection being bonafide purchaser for value without notice and whether decree can be executed against petitioner, who were not parties to decree. However, learned Executing Court, without appreciating contentions, curtailed petitioners' right to defend interest. He would submit that under Order XXI Rule 101, the Executing Court is empowered to adjudicate all questions relating to right, title and interest in subject property. In wake of scheme of provisions contained under Rule 97 and 101, refusal of Executing Court to frame the proposed issues and allow petitioner to lead evidence in deference to proposed issues cannot be countenanced.

7. According to Mr. Shah, core issues framed by this Court would not cover all controversies. Further, this Court never restricted Executing Court from framing further issues arising for adjudication. Proposed issues by petitioner were independent and in addition to issues framed by this Court. Therefore, Executing Court ought to

have proceeded to frame the proposed issues and undertaken comprehensive adjudication of the dispute.

8. Mr. Shah would submit that, *prima facie*, execution proceeding is a collusive attempt of decree holder and judgment debtor to extract money from petitioner. Therefore, issue as to whether “allegations of collusion and suppression of material facts” will have to be decided only after recording oral and documentary evidence. The Executing Court has curtailed right of petitioner to establish his case by directing parties to advance final arguments on basis of documentary evidence already tendered into service by parties.

9. Mr. Shah in support of his contentions heavily relies upon observations of Hon’ble Supreme Court of India in following cases:-

***1. Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal and another*¹**

***2. Ashan Devi and another Vs. Phulwasi Devi and others*²**

***3. Shamsher Singh Vs. Lieutenant Colonel Nahar Singh through legal representatives and others*³**

***4. Jini Dhanraj Gir and another Vs. Shibu Mathew and another*⁴**

10. Per contra, Mr. Yuvraj Narvankar, learned advocate appearing for respondent would submit that this Court has already laid down contours of controversy to be decided by Executing Court. Gist of

¹ (1997) 3 SCC 694.

² (2003) 12 SCC 219.

³ (2019) 17 SCC 279.

⁴ (2023) 20 SCC 76.

petitioner's contentions is laid down and covered in sole issue framed by this Court and Executing Court need not frame any more issues. According to Mr. Narvankar, petitioner has suggested as many as Ten issues to be framed by Executing Court only with intention to protract execution proceeding. Petitioner has purchased the property with a knowledge of decree passed in suit against defendant/ judgment debtor with intention to frustrate the fruits of decree. According to Mr. Narwankar, scheme under Order XXI Rule 97 to 108 would not be permitted to be used for abusing process of law of Court. The Executing Court has to exercise discretion within four corners of law. If frivolous objections are raised with intention to prolong execution of decree, same can be rejected without trial of every such objection.

11. In support of his contentions, he relies upon observations of Hon'ble Supreme Court of India in following cases:-

1. *Rocky Tyres Vs. Ajit Jain*⁵.
2. *Siver line Forum Pvt Ltd. Vs. Rajiv Trust and another*⁶.
3. *Usha Sinha Vs. Dina Ram and others*⁷.
4. *Manik Motiram Dalwale died through L.rs Vs. Suhas Vasantrao Javadekar and others*⁸.

12. Having considered submissions advanced by learned advocates appearing for respective parties and on perusal of material tendered into service, it cannot be disputed that, petitioner acquired title and

⁵ 1997 SCC OnLine P&H 1422.

⁶ (1998) 3 SCC 723

⁷ (2008) 7 SCC 144

⁸ A.O. No.55 of 2011

interest in suit property in terms of deed of assignment dated 26.2.2019 in pursuance to memorandum of understanding (MOU) with judgment debtor. Thereafter, decree holder filed an application Exhibit 45 for issuance of warrant of attachment of property in pursuance to execution of money decree. Since petitioner deposited decretal amount i.e. 49,07,298/-, this Court while disposing of Writ Petition no.14052 of 2024 and 14053 of 2024 directed removal of attachment with further directions to Executing Court to decide fundamental question as to 'whether decree is liable to be executed against subject property in hands of petitioner'. In backdrop of aforesaid directions, petitioner moved subject application praying for framing of proposed issues in execution proceeding, so also prayed to allow the parties to file additional affidavits and documents and lead appropriate evidence in support of pending applications below Exhibit 84, 94 and 98.

13. Perusal of impugned order shows that Executing Court observed that during pendency of execution proceeding, petitioner had entered into agreement i.e. MOU dated 4.11.2017 with JD and deed of assignment dated 26.02.2019 has been executed by JD no.1 in favour of petitioner. Therefore, only issue as framed by this Court as to 'whether decree is liable to be executed against subject property' needs adjudication by Court and other issues as suggested by petitioner need not be framed. Similarly, Executing Court observed

that issue can be fairly adjudicated on basis of documents and arguments of both sides. Parties need not be permitted to adduce oral evidence.

14. It can be further observed that petitioner wants that applications filed below Exhibit 84, 94, 98 and 122 shall be decided together after recording evidence in support of such applications. Application Exhibit 84 is filed under Order XXI Rule 97 and seeks cancellation of possession warrant and directions for sale of property. As rightly observed by Trial Court, since this Court has already removed attachment in deference to deposit of decretal amount, controversy would be limited if money decree can be executed against subject property in hands of petitioner. Similarly, application Exhibit 94 seeks cancellation of possession warrant, application at Exhibit 98 seeks recall of the order of issuance of attachment warrant and sale of property and application Exhibit 122 seeks permission to deposit amount. Therefore, observations of Executing Court that prayers in all applications are again limited to issues as framed by this Court, cannot be faulted.

15. The petitioner wants to frame as many as ten issues, which are as under :-

- i. Whether the decree is liable to be executed against the subject property, which is currently in the hands of the Applicant (third party, Gharda Chemicals)?

- ii. Whether the decree under execution is a money decree, and if so, whether a property belonging to the applicant (a third party) can be attached in execution of such a decree?
- iii. Whether the provisions of Section 52 of the Transfer of property Act, 1882 (Doctrine of List Pendens) are applicable to the facts of the present case?
- iv. Whether , in view of the provision of Section 52 of the Transfer of Property Act , 1882, the rights of the applicants are subject to the outcome of the execution proceedings and whether the present decree is a collusive decree in context of section 52 and its applicability?
- v. Whether the applicants are bonafide purchasers for value without notice of the decree?
- vi. Whether the decree can be executed against the applicants and/or whether the applicants are liable to satisfy the decree?
- vii. Whether the decree holders are entitled to seek any orders against the applicant in the present execution proceedings?
- viii. Whether the applicants' objections to the execution proceedings and objections to the attachment of the Subject property are legally tenable and should be allowed?

- ix. Whether the decree holders have a valid claim against the applicants concerning the subject property in execution proceedings?
- x. In view of the above what directions are to be passed in respect of the Money deposited by the Applicants?

16. The gist of all issues is covered in first issue that has been already framed by this Court and taken into consideration by Executing Court. Therefore, this Court do not find any substance in contention of petitioner that proposed issue numbers 2 to 10 are required to be independently framed or the Executing Court fell in jurisdictional error by limiting controversy in execution proceeding to issue no.1.

17. The next contention raised on behalf of petitioner is that, Trial Court has erroneously curtailed right of petitioner to lead oral and documentary evidence in support of his contentions. Although, Mr. Shah has strenuously contended that Executing Court is required to decide all questions including right, title or interest in property between parties to proceeding and petitioner is entitled to raise all such questions before Executing Court objecting maintainability of execution proceeding and executability of a decree against property in question and relies upon the exposition of law in judgments referred above, this Court finds that impugned order nowhere curtails petitioner's right to establish his case that decree is not executable

against subject property. In fact, petitioner is given liberty to address upon aforesaid issue, particularly, on the basis of documents, which are already on record.

18. So far as contention of petitioner that he will have to lead evidence to prove contents of document, petitioner may file an application calling upon respondent/decree holder to admit or deny those documents. In case, respondent objects or denies to admit documents in evidence, petitioner will have to be given an opportunity to lead evidence to the extent of proof of such document and in a given case, to prove contents of such document. Right of petitioner to bring any material, which is relevant to decide issue framed can not be curtailed by directing him to advance submissions without relying upon documents which are denied or objected by respondent. In such cases, Executing Court would be at liberty to *prima facie* examine relevancy of such documents and then permit petitioner to lead evidence relevant for determination of issue.

19. Although, Mr. Narwankar, learned advocate appearing for respondent submits that permission to lead evidence would prolong the execution proceeding or expand the scope of proceeding, in light of aforesaid observations, this Court finds that interest of justice would be served, if petitioner is permitted to file application calling upon respondent /decree holder to admit or deny documents and subject to response of decree holder, seek permission to lead oral

evidence in support of contents of such documents. Needless to mention that, Executing Court will decide relevancy of such documents for purpose of deciding the issue, as framed and permit petitioner to lead evidence of only such documents.

20. In that view of matter, following order is passed:-

O R D E R

- i. Writ Petition is partly allowed.
- ii. The impugned order to the extent of directions to the parties to submit their arguments on questions framed, thereby curtailing right of the parties to lead evidence is quashed and set aside.
- iii. The petitioner shall be at liberty to file an application for issuance of notice to respondent / decree holder for admission and denial of documents relied upon by him, in support of his contentions in pursuance to the question framed by this Court in Writ Petition no.14052 of 2024 and 14053 of 2024.
- iv. The Executing Court shall hear the parties and decide relevancy of the documents sought to be relied upon by the petitioner in light of the question framed and issue notice to the respondent/decreed holder to admit and deny only those documents which are found relevant for decision of the questions framed.
- v. In case, the respondent/decreed holder responds and accepts the documents, those can be admitted in evidence, however, in case,

respondent/decreed holder refuses to admit the documents, the petitioner shall be granted an opportunity to lead oral evidence in support of such documents and respondent/ decreed holder shall be at liberty to cross-examine the witness.

vi. In case, the respondent/decreed holder wishes to lead any oral evidence, he may be permitted to do so.

vii. The aforesaid exercise shall be completed within a period of Two (2) months from the date of this order.

viii. The Executing Court shall pass further orders within a period of one month thereafter. As such, the execution proceeding shall be disposed of within a cumulative period of Three (3) months from the date of this order.

ix. Writ Petition stands disposed off.

(S.G. CHAPALGAONKAR, J.)

aaa/-