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

WRIT PETITION NO.12633 OF 2025

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VAIBHAV
RAMESH JADHAV
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Nilavati Babaso Kudache	... Petitioner
V/s.	
Umadevi Gundu Raval & Ors.	... Respondents

Ms. Divya A. Pawar-Patil with Ms. Trupti Padekar for
the petitioner.

Mr. P. R. Patil for the respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 22, 2025

P.C.:

1. Present writ petition takes exception to order dated 8th October 2025 passed by learned Joint Civil Judge, Junior Division, Ichalkaranji in Regular Darkhast No. 23 of 2024, whereby application filed by petitioner below Exhibit 21 has been rejected.

2. Petitioner is judgment debtor in Regular Darkhast No. 23 of 2024. The decree for specific performance of contract passed in Regular Civil Suit No. 352 of 2012 is put to execution, whereby judgment debtor is directed to execute sale deed of her 1/4th share in suit properties in favour of plaintiffs. Respondents/decreed holders filed draft sale deed before executing Court as per pursis filed below Exhibit 12. The petitioner/judgment debtor filed application below Exhibit 21/d contending that in absence of

compliance with requirement under Order XXI Rule 34 of Code of Civil Procedure, 1908, draft sale deed needs to be discarded. Executing Court rejected the said application vide impugned order dated 8th October 2025.

3. Ms. Pawar, learned advocate appearing for petitioner, would submit that mandate under Rule 34 of Order XXI of Civil Procedure Code, 1908 needs to be scrupulously followed. There must be notice inviting objections from judgment debtor on proposed draft of sale deed. The Court must fix time within which objections are to be filed and thereafter decide whether draft is to be approved or not. In support of her contentions, she relies upon observations of the Hon'ble Supreme Court in case of *Rajbir v. Suraj Bhan & Anr.*, reported in (2022) 16 S.C.R. 932, and judgment of the High Court of Karnataka dated 16th June 2022 in case of *Dada s/o Balu Rooge & Anr. v. Appasaheb s/o Kiran Keste & Anr.*

4. Mr. P. R. Patil, learned advocate appearing for respondents, would support impugned order contending that draft of sale deed along with pursis filed below Exhibit 12 was served upon petitioner. Petitioner could have raised objections, if any. In absence of specific objection to contents of draft of sale deed, executing Court has rightly rejected application filed below Exhibit 21.

5. Having considered submissions advanced, it can be observed that dispute in present writ petition pertains to non-compliance with mandate under Order XXI Rule 34 of Civil Procedure Code,

1908. Rule 34 of Order XXI of Civil Procedure Code, 1908 reads thus:

“34. Decree for execution of document, or endorsement of negotiable instrument.—(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit. ...”

6. The Hon’ble Supreme Court interpreted aforesaid Rule in case of ***Rajbir*** (supra) and observed in paragraph No.10 as under:

“10. The present is indeed a case where the decree in question provides for the execution of the document. The document is the document of sale as contemplated under the decree. Therefore, Order XXI Rule 34 is clearly attracted. It contemplates that if the judgment debtor neglects or refuses to obey the decree, the decree-holder is to prepare a draft of the document. In this case, the draft of the document is the draft sale deed. The draft of the sale deed must further be in accordance with the terms of the decree. It is to be delivered to the court. Thereupon, it is not required that the decree holder must directly deliver it to the judgment debtor. The procedure, therefore, is that the decree holder must make it available to the Court. Under Order XXI Rule 34, it becomes the duty of the court to thereupon cause the draft to be served upon the judgment debtor. There must be a notice inviting objections and the court may fix a time within which objections are to be filed. The judgment debtor may or may

not object. Order XXI Rule 34 sub-rule (3) contemplates a situation where the judgment debtor objects. This is to be contained in writing within the time provided. The court is duty bound to make an order approving or altering the draft as it thinks fit. This is of considerable importance having regard to what may follow subsequently on the strength of the decree. It is also important from the point of view of the role of the executing court which is to act in conformity with the decree.”

7. Perusal of the record of case in hand indicates that on 6th March 2025, respondents/decreed holders filed pursis along with draft of sale deed. It is true that there is endorsement regarding receipt of pursis by judgment debtor. However, there is nothing to show that executing Court issued any notice requiring objections, if any, to proposed draft of sale deed. In absence of such notice, sale deed cannot be approved for execution and further direction cannot be issued by executing Court. Impugned order suggests that executing Court presumed that judgment debtor has no objection regarding contents of proposed sale deed and accordingly rejected application filed by petitioner to discard proposed draft of sale deed. In that view of matter, writ petition deserves to be partly allowed.

8. Hence, following order:

- a) The writ petition is partly allowed.
- b) The executing Court shall ensure that proposed draft of sale deed is served upon petitioner/judgment debtor within a period of four weeks from the date of this order along with notice calling upon objections, if any, from petitioner.

- c) Petitioner/judgment debtor shall file objections, if any, within a period of two weeks from the date of service of notice by executing Court along with proposed draft of sale deed.
 - d) After considering objections, executing Court shall pass further orders, either accepting draft of proposed sale deed or directing modification, if any.
9. The writ petition stands disposed of in aforesaid terms.

(S. G. CHAPALGAONKAR, J.)