

Shabnoor

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

WRIT PETITION NO.16231 OF 2024

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Vijay Arun Pawar & Ors.	... Petitioners
V/s.	
The State of Maharashtra & Ors.	... Respondents

Mr. Nitin Gaware Patil a/w Mr. Divyesh K. Jain, for the petitioners.

Mr. Y. D. Patil, AGP for the State – respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 13, 2025

P.C.:

1. I have considered the record and the submissions. The petitioners face an attachment order issued by the Special Recovery Officer under Rule 107(11) of the MCS Rules. They carried this order in revision under Section 154 of the MCS Act. The Revisional Authority declined to interfere. The petitioners have therefore approached this Court. The facts are simple. The attachment is a step taken in furtherance of the certificate issued under Section 101. The controversy centres on whether such attachment could have been sustained without examining the legality of the certificate.

2. The petitioners submit that the certificate under Section 101 was issued in breach of Rule 86(f) of the MCS Rules. They rely upon the judgment in Sandeep Polymers Pvt. Ltd. v. State of

Maharashtra. They urge that the procedure before the Registrar was defective and therefore the certificate itself is tainted. They contend that if the certificate suffers from irregularity, the consequential attachment must also fall.

3. The challenge placed before this Court must be understood in its proper legal frame. The petition pertains only to the attachment ordered by the Special Recovery Officer. The authority was acting in execution of a certificate that already stands issued. The character of this action is purely executionary. It is ministerial in nature. It does not permit the Special Recovery Officer to sit in appeal over the certificate. The law governing execution binds him to enforce the certificate as it exists.

4. The settled position of law recognises a clear boundary. An Executing Court cannot go behind a decree. It cannot test the decree on merits. The Special Recovery Officer stands on the same footing while implementing a Section 101 certificate. He has no jurisdiction to examine whether the Registrar's certificate is correct or illegal. If the petitioners question the legality of the certificate, they must adopt the remedy that the statute provides for challenging the certificate itself. A proceeding confined to the attachment under Rule 107(11) cannot become a forum to test the validity of the certificate. Allowing such a course would undermine the scheme of execution and create uncertainty in the recovery process.

5. I am therefore of the considered view that the grievance raised by the petitioners cannot be entertained in this writ petition.

Their objections relate to the certificate. The present proceedings arise from the attachment. Both operate in different spheres. The petitioners must pursue the remedy available in law to challenge the certificate, if they are so advised. No ground is made out for interference with the attachment order. The petition fails and is dismissed.

6. It is clarified that the dismissal of this petition shall not prevent the petitioners from questioning the validity of the certificate issued under Section 101 by adopting appropriate proceedings in accordance with law.

(AMIT BORKAR, J.)