IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 15705 OF 2024
WITH
FIRST APPEAL NO. 1954 OF 2024

Nikhil Wadke ...Applicant
Versus
Frenny F. Bhadha and Ors. ...Respondents

AND
INTERIM APPLICATION NO. 15708 OF 2024
WITH
FIRST APPEAL NO. 1955 OF 2024

Nikhil Wadke ...Applicant
Versus
Freddy K. Bhadha and Ors. ...Respondents

AND
INTERIM APPLICATION NO. 15742 OF 2024
WITH
FIRST APPEAL NO. 1968 OF 2024

Nikhil Wadke ...Applicant
Versus
Sabina Khanna and Ors. ...Respondents

***

Mr. Anil D'Souza a/w Mr. Vinay Ansurkar, Ms. Raika Chaoudhari i/b Mr. Kartik Vig for the Applicants.
Mr. Vishwajeet Kapse a/w Mr. Dhananjayan Kadam for Respondents.

***

CORAM : M.M. SATHAYE, J.
DATE : 22nd JULY, 2025

P.C. :

1. These Interim Applications are filed by common Applicant/Appellant in the above First Appeals. The applications are

filed seeking stay to the impugned orders dated 24.09.2024 passed in three Chamber Summons in 3 execution applications and also for stay to warrant of attachment dated 07.02.2020. Respondent No.1 in three appeals, are 3 Plaintiffs in 3 Summary Suits filed against common Defendant. The necessary details are given below in tabular form.

Sr.No.	Name of Original Plaintiff	Summary Suit No.	Execution Application No.	Chamber Summons No.	First Appeal No.
1	Freddy K. Bhadha	3027/2012	980/2013	450/2022	1955/2024
2	Frenny F. Bhadha	3028/2012	982/2023	451/2022	1954/2024
3	Sabina Khan	2857/2012	981/2013	452/2022	1968/2024

2. By the impugned Orders, the Chamber Summons taken out by the Appellant for lifting of attachment of Flat No. 51 Sunville CHS Ltd. Opp. Infant Jesus School, Off. Chincholi Bunder Road, Malad (W), Mumbai – 400064, has been dismissed. This property is hereinafter referred to as 'suit property' for short. The appeals and applications are arising out of common set of facts inasmuch as 3 Plaintiffs had filed 3 summary suits against Defendant-Company, which came to be decreed. In 3 Execution Applications for recovery of amount against the Defendant-Company, the suit property came to be attached. By 3 Chamber Summons, the present Applicant has tried to lift the attachment on the suit property, purchased by him.

3. Learned Counsel for the parties have filed compilation of documents which are served upon each other and record was shown to this Court from the said compilation.

4. Few facts necessary for disposal of these applications are as under. The suit property was purchased by one Mr. Hirji Kanji Patel on 10.06.2004. In September 2011, the said 3 Plaintiffs filed 3 summary suits against common Defendant-Company (Allied Computers International Asia Ltd.) seeking recovery of money on the basis of cheques issued and certain documents including demand promisory note executed by said Mr. Hirji Patel, who was owner of the suit property. Suit summons in the summary suits were duly served upon the said Hirji Patel on 17.04.2012 as a Director and authorised signatory of Defendant-Company. Knowing fully well that suits are filed for recovery of money against Defendant-Company, the said Hirji Patel executed registered Gift Deed in respect in favour of his mother Smt. Valbai Kanji Patel on 19.07.2012 gifting the same. In the meantime, on 09.02.2012, the Plaintiffs through their Advocate had informed the society in which suit property is situated, recording their objections to dealing with suit property along with 2 other flats owned by the said Mr. Hirji Patel. In September 2012, the summary suits were transferred to City Civil Court owing to change in pecuniary jurisdiction. By an undated NOC issued under signature of only the Chairman of the society, the suit property was permitted to be transferred.

5. On 03.07.2013, *ex-parte* money decrees came to be passed against the Defendant-Company. The Plaintiffs filed 3 Execution Applications and first attachment of the suit property took place on 28.04.2014. The said Smt. Valbai filed Chamber Summons No. 1896 of 2014 in Execution Application No. 982 of 2013 praying for lifting of attachment. On 05.05.2014 the Respondent Decree holder brought the attachment order of suit property to specific notice of the society by a letter recording that attachment order is pasted on the property. The

Applicant claims to have come in contact with Smt. Valbai sometime in October-November 2014. The Applicant got a home-loan sanctioned and on 05.01.2015, Smt. Valbai sold the suit property to the Applicant under a registered Agreement for Sale (Sr. No. 166/2015). It appears that by a certificate of same date- 05.01.2015, the society, once again under sole signature of Chairman, gave no objection for selling of the suit property. On 11.02.2015, surprisingly Valbai, despite selling the suit property to the Applicant, again filed a Chamber Summons No. 310 of 2015 in Execution Application No. 980 of 2013 seeking lifting of attachment, which came to be dismissed for default on 21.10.2016. In September 2019, the earlier Chamber Summons filed by Smt. Valbai (No. 1896 of 2014 for lifting attachment) got dismissed for default. In January-February 2020, the suit property was again attached and warrant of attachment was issued in respect of suit property and one more property being Flat No. 52. The Applicant attended the office of Economic Offence Wing ('EOW') Mumbai for recording statement in respect of the FIR filed against the Defendant-Company. In September 2021, the City Civil Court issued warrant for sale. The Applicant filed his objections before the Commissioner for taking accounts some time in December 2021 and filed 3 Chamber Summons Nos. 1932, 1933 and 1934 of 2021. It appears that in February 2022, these 3 Chamber Summons withdrawn and present 3 Chamber Summons (450, 451 and 452 of 2022) are filed challenging the warrant of sale and attachment. Ultimately, by impugned orders dated 24.09.2024 all 3 Chamber Summons have been dismissed. In these facts and circumstances, the Applicant is before this Court in First Appeals.

6. Learned Counsel for the Applicant submitted that the suit property is not the property of the Defendant-Company and therefore, it

cannot be attached in Execution of decree against the company. He submitted that on the date of filing of execution, Smt. Valbai was the owner against whom there was no decree. He submitted that there is already attachment existing about another flat at Andheri regarding which the litigation is pending in this Court in which one Ms. Namita S. Agarwal is directed to deposit 50% of the concerned amount and that flat is sufficient to satisfy the decree in all 3 suits. Therefore, the present warrant of attachment in respect of present suit property ought to be recalled/lifted. He submitted that the issue as to whether the registered Gift Deed executed by Mr. Hirji Patel in favour of his mother Smt. Valbai prior to decree was valid or not, cannot be considered in the present execution proceedings.

7. He further submitted that the Applicant was not aware about pendency of execution application or attachment of property. That Smt. Valbai represented that there was no encumbrance on the property and the encumbrance of Bharat Co-operative Bank was cleared and after release of suit property from Bharat Co-operative Bank, the Applicant raised home-loan and purchased the suit property. He submitted that during the entire process, neither Smt. Valbai, nor the society informed the Applicant about purported attachment. He submitted that Smt. Valbai Patel was not Judgment Debtor and therefore, the Execution cannot proceed against the suit property and attachment must be lifted. He submitted that under Order 21 Rule 54 of Civil Procedure Code, 1908 ('CPC' for short), only property of Judgment Debtor (Defendant-Company) can be attached. He has relied on Section 60 and 64 of CPC in support of his arguments. He further relied on Order XXI Rule 41(b) of CPC to contend that authorised officer is to be examined for showing the property of the Judgment Debtor company, which has not been

done. He submitted that lifting of corporate veil has not been pleaded and considered. Learned Counsel for the Applicant relied upon Judgments of **Belarmina Gowda v/s. Ranjith Nath [2019 SCC Online Bom 588]** and **V.K. Uppal v/s M/s. Akshay International Pvt. Ltd. [2010 SCC Online Del 538]**, in support of his case.

8. Per contra, Mr. Kapse learned Counsel for the Respondents/ Plaintiffs/ Decree Holders submitted that the record clearly shows that in order to defraud the Plaintiffs and to avoid payment of money Mr. Hirji Patel who was the Director and authorised signatory of the Defendant-Company, despite clear knowledge of pendency of suits, has gifted the suit property to his mother. He submitted that despite their objections to the Society, the concerned Co-operative Housing Society has issued undated NOC and bona-fide certificate as well as no objection to sell without concurrence of the Managing Committee of the society and only at the instance of Chairman, which is sufficient to indicate illegality in the transaction. It is submitted that in another Chamber Summons by Ms. Namita S. Agarwal in respect of property at Andheri, arising out of present suits, execution was taken out and that property at Andheri was attached and similar attempt by said Ms. Agarwal for lifting of attachment has been dismissed under Order dated 10.04.2023 in CHS/472/2021. He further submitted that Chamber Summons of one more person Amitesh Chadda seeking stay of proposed auction of another property Flat No. 52 arising out of present suits, the attempt to stall recovery has been dismissed by order dated 25.03.2025 in CHS/1887/2024.

9. I have considered the submissions and perused the record with the assistance of learned Counsel for the parties.

10. At the outset, it is necessary to note that facts are not really disputed. As noted earlier, admittedly the suit-summons were served on Hirji Patel on 17.04.2012, who had received them as the Director and authorised signatory of Defendant-Company. Admittedly, suits were for recovery of money on the basis of issuance of cheques being negotiable instruments and on the basis of demand promisory notes. Money decrees passed in the suits are put to execution. Admittedly, during pendency of the suits, the said Mr. Hirji Patel gifted present suit property to his mother and therefore, the transaction is hit by principle of *lis pendence* under Section 52 of the Transfer of Property Act, especially when suit claim is also based on demand promisory notes of said Mr. Hirji Patel. Case of the Decree holders that this is fraudulent transfer is squarely covered under section 53 of the Transfer of Property Act. The question as to whether the suit property can be considered as property of Defendant-Company and whether gift deed in favor of Smt. Valbai was a fraudulent transfer are the issues which are well within the jurisdiction of the Executing Court under provisions of Order 21, Rule 58 (1), (2) & (3) of CPC.

11. It is material to note that both before and after sale of the suit property in favour of the Applicant, Smt. Valbai tried to lift the attachment over suit property, and the attempts were unsuccessful. Before sale of suit property to the Applicant, Valbai in August 2014 had filed a Chamber Summon. During pendency of this Chamber Summons, suit property was sold in January 2015. Despite selling it, Smt. Valbai again filed Chamber Summons in February 2015 for lifting of attachment, it is not known under what authority. Both these Chamber Summons have been dismissed for default in October 2016 and

September 2019.

12. Whether the Applicant was aware of pendency of litigation is a matter of appreciation of evidence, which will take place at the time of final hearing of appeal. The Applicant claims to be a bona-fide purchaser. But he has not shown any material to indicate that basic due diligence in the form of issuance of title verification public notice has been done. Mere fact that home-loan was sanctioned by a finance company is not sufficient to hold at this stage that the Applicant was duly diligent or a bona-fide purchaser of the suit property. It has also come on record that Smt. Valbai in affidavit in support of chamber summons, admitted that on 25.04.2014 by beat of drum, information was given in the building about decree and attachment. It has come on record that attachment order was pasted on the property, as recorded in letter dated 05.05.2014. Order of attachment issued under Order XXI, Rule 54(2) provides for pasting/affixing order copy in conspicuous part of the property. It is settled law that it has implication of making the actions known *in rem*. This has direct bearing on the Applicant's claim of being bona-fide purchaser. Having entered into shoes of Smt. Valbai under registered document of 05.01.2015, the fact that she had filed 2 Chamber Summons for the same relief, which were dismissed for default, also has a bearing on the case of the Applicant. It is also seen that Applicant was required to attend the office of EOW, Mumbai for giving statement in respect of FIR lodged. This also indicates that either Mr. Hirji Patel or the Defendant-Company was under investigation for economic offences.

13. In view of above, at the present interim stage, sequence of events clearly indicate that Mr. Hirji Patel has transferred the suit

property to keep it away from monetary claims by the Respondents.

14. Viewed in the light of what is observed, if the impugned order is perused, it is seen that the Trial Court has considered the case of the Respondents/ Decree Holders that Mr. Hirji Patel was the Managing Director of the Defendant-Company who had executed promisory note and personal guarantee against loan advanced to the Defendant-Company and had issued cheques in favour of the Decree-Holders and said Mr. Hirji Patel was personally liable to pay the amount. The Trial Court has also considered that said Mr. Hirji Patel had duped many people such as present Decree-Holders and crime has been registered against him and therefore, transfer of suit property to his mother is apparently fraudulent. The Trial Court has considered that after other Directors of the Defendant-Company resigned, it is the claim of the Decree-Holders that Mr. Hirji Patel was sole in-charge of the company to whom friendly loans were advanced and therefore, promisory notes were executed by him. The Trial Court has also considered that mother Smt. Valbai had also filed Chamber Summons which was dismissed. The Trial Court has also considered the practical aspect of the matter that a son of 54 of age has gifted property to old mother of 73 years and it raises doubt on the real intention behind the transaction.

15. It is the matter of record that the arguments advanced before this Court on behalf of the Applicant about the aspect of lifting of corporate veil, procedure under Order XXI, 41(b) or based on section 60 & 64 of CPC, none of these seem to have not been advanced before learned Trial Court. Whether said arguments can be advanced for the first time in this Court is a matter of debate. Section 60 of the CPC *prima facie* covers the suit property within its ambit considering what is

provided in the section 60(1) of CPC which reads thus :

> "**60. Property liable to attachment and sale in execution of decree**— (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf: "
>
> [emphasis supplied]

16. In the judgment of **Belarmina Gowda (supra)** relied upon by the Applicant, learned Single Judge of this Court was considering discharge of Judgment Debtor finally and the Petitioner therein was not a director of the judgment debtor company. In the present case, said Mr. Hirji Patel was director of the defendant company. In the judgment of **V.K.Uppal (supra)**, learned Single Judge of Delhi High Court has held that for lifting of corporate veil, a case of fraudulent transfer has to be made out. In the peculiar facts of this case, such case is clearly made out as explained above. Therefore both the said judgments will not advance the case of the Applicant.

17. In the aforesaid facts and circumstances and for the reasons indicated above, there is no merit in the applications and the same are rejected.

18. At this stage, learned Counsel for the Applicant seeks extension of interim protection granted on 18.12.2024 (clause 11 thereof). Learned Counsel for the Respondents opposes this request contending that the tender referred in the said clause has failed and there is no immediate threat of sale of subject matter flat. In fairness, it is directed that if the execution proceedings are pressed and it reaches the stage of issuance of tender for sale of subject matter flat, the tender will not be opened for a period of only 4 weeks from today i.e. till 19.08.2025. Thereafter, the execution can proceed in accordance with law.

19. All concerned to act on duly authenticated or digitally signed copy of this order

(M.M. SATHAYE, J.)