

K.R.Gadekar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

EXECUTION APPLICATION NO. 163 OF 2005

Anuradha Nayan Shah

...Applicant

Versus

Jayantilal Vallabhdas Patni and Ors.

...Respondents

WITH
CHAMBER ORDER NO. 571 OF 2025
IN
EXECUTION APPLICATION NO. 163 OF 2005

Anuradha Nayan Shah

...Applicant

Versus

Jayantilal Vallabhdas Patni and Ors.

...Respondents

WITH
INTERIM APPLICATION(L) NO. 37135 OF 2025
IN
SUIT NO. 1264 OF 2000

Vallabhnagar Cooperative Housing Society Limited

...Applicant

Versus

Jayantilal Vallabhdas Patni and Ors.

...Respondents

Mr. Hrishikesh Joshi a/w. Ms. Karuna Nikam i/by. Nivit Srivastav, for the Applicants in Execution Application No.163 of 2005

Mr. Prateek Pai a/w. Ms. Tvishi Pant, Ms. Mrinali Dave, i/by. Keystone partners for Applicant in Interim Application (L) No.37135 of 2025

Mr. Arun Panicker, for Manohar Properties Pvt. Ltd.

Mr. D.S. Choudhary, Deputy Sheriff, present

CORAM: MADHAV J. JAMDAR, J.

DATED: 03 DECEMBER 2025

P.C.:

1. The Interim Application (L) No. 37135 of 2025 is taken out by the Applicant - Vallabhnagar C-op. Housing Society Ltd.
2. The reliefs sought in the Interim Application are as follows:
 - a) **Order and declare that the Defendants, at the highest, merely have a leasehold interest in the said Plot viz. Plot No.61, Vallabhnagar Cooperative Housing Society, JVPD Scheme, Vile Parle(W), Mumbai 400056 which is governed by the Lease Deed dated 5th February 1966 (being Exhibit D hereto), and is subject to the terms of the said Lease and the bye-laws of the Applicant society;**
 - b) **Direct that the Proclamation of Sale drawn up and/or issued pursuant to the Warrant of Attachment dated 8th June 2006 and the Warrant of Sale dated 13th November 2006 (if subsisting/extended), be modified/clarified/amended to specify that the attached property in question is limited to the leasehold interest of the Defendants arising out of the Lease Deed dated 5th February, 1966 (being Exhibit D hereto), and is subject to the terms of the said Lease and the bye-laws of the Applicant society, insofar as the said Plot viz. Plot No.61, Vallabhnagar Cooperative Housing Society, JVPD Scheme, Vile Parle(W) Mumbai 400056 is concerned.**
 - c) Pending the hearing and final disposal of this Interim Application, direct the Plaintiff to provide the Applicant with a complete set of the papers and proceedings in the captioned Suit No. 1264 of 2000 and Execution Application No. 163 of 2005, including any applications filed or orders passed therein as also any third party claims (together with the supporting documents) that have been submitted in these execution proceedings;

- d) Pending the hearing and disposal of this Interim Application, direct the Sheriff's Office to furnish the Applicant with a copy of the Valuation Report submitted by M/s. Neelam Arch on 26th August 2025;
- e) Pending the hearing and disposal of this Interim Application, pass an order staying the operation and effect of the Warrant of Attachment dated 16th June 2006 and the Warrant of Sale dated 13th November 2006 (if subsisting/extended), and direct that no steps be taken in furtherance of the proposed auction sale, inter alia, including as sought in Sheriff's Report No. 42 of 2025;
- f) Pass such other and further orders as this Hon'ble Court may deem fit, in the facts and circumstances in the present case;
- g) Pass an order for costs.

(Emphasis added)

2) In view of the above reliefs sought in the Execution Application it is necessary to set out the relevant contents of the Affidavit in Reply of Mr. Kailash G. Joshi, Constituted Attorney of Plaintiff / Decree Holder dated 26th November, 2025. The contentions raised in Para 6.5, 6.8 and Paragraph Nos. 12, 13 and 17 are relevant which reads as under :

“6.5. It is in this premise, in or above November, 2007, the Plaintiff filed further affidavit of attached property of Defendant Nos. 1 to 3 whereby the Plaintiff prayed that the said “Bhavna” building be attached and be made available for sale in execution of the said decree passed by this Hon'ble Court in the above matter. It is pertinent to know that, **in the said Affidavit, the Plaintiff has categorically mentioned that the said subject property i.e. the said Plot No.61 was subject**

to Deed of Lease dated 5th February 1966 executed by the Applicant society in favour of Defendant Nos. 1 to 3 and the lease hold plot of land of land is available for sale by assignment in execution in the above matter. Hereto annexed and marked as **Exhibit “1”** is the Affidavit dated 1st November 2007 filed by the Plaintiff in the above matter.”

“6.8. It is pertinent to note that even at this period of time, this Hon’ble Court and the parties thereto in the above execution application appraised above the leasehold rights of Defendant Nos. 1 to 3 in the subject plot and the rights of Defendant Nos.1 to 3 in the “Bhavna” building.”

“12. Be that as it may, it a settled fact that one can transfer only those titles/rights with respect to the movable/immovable property which the person possesses. As illustrated above, the Plaintiff herein was ad-idem with the title of the said Plot NO. 61 and the said “Bhavna” building. Plaintiff has not filed with present execution proceedings to wrongfully usurp the title of the Applicant society, on contrary the same has been filed by the Plaintiff for recovery of the claim/money with the Plaintiff is lawfully entitled.”

13. The Plaintiff has reasons to believe that the subject matter of the public auction in the present proceedings are the right, title and interest of the Defendant Nos. 1 to 3 in the Plot bearing No.61 along with the said “Bhavna” building standing on the said plot on the subject property.

17. The Plaintiff further submits that, apart from the subject property, at this juncture the Plaintiff is unaware of any other asset/s of the Defendant from which the Plaintiff could recover the decreed amount. **The right, title and interest of Defendant Nos. 1 to 3 in the said plot no. 61 (being leasehold rights) and the rights with respect to the “Bhavna” building are therefore a matter of attachment this Hon’ble Court.** Grave prejudiced will be caused to the Plaintiff if the attachment on the subject property is recalled by this Hon’ble Court.

(Emphasis added)

3) The Applicant Society has filed Affidavit in Rejoinder of Ms. Apurva Patil, Authorized representative of Applicant-Society dated 2nd December, 2025 by interalia stating in para 4 and 5 as under :

4. It is respectfully submitted that upon a bare perusal of the position taken by the Plaintiff in the said Reply, the reliefs sought in the captioned Interim Application ought to be granted. This is, *inter alia*, for the following reasons:

a) The Plaintiff has stated that it had filed an affidavit dated 1st November, 2007, in which the Plaintiff categorically took the position that the said Plot was subject to a Lease Deed executed between the Applicant and Defendants and that the leaed said Plot was available for sale by assignment in execution (*paragraph 6.5/page 84 of the said Reply*) This is evident from paragraph 2 of the affidavit dated 1st November 2007. (*page 91 of the said Reply*)

b) Even around 2008-2009, this Hon'ble Court had been apprised that the Defendants merely had leasehold rights in the said Plot. (*paragraph 6.8 / page 85 of the said Reply*)

c) The Plaintiff is *ad-idem* with the Applicant insofar as the title of the said Plot is concerned. (*paraghrath 12 / page 88 of the said Reply*)

d) The Defendants only have leasehold rights in the said Plot, which can be attached. (*paragraph 17 / page 89 of the said Reply*)

5. It is therefore unequivocally clear that **the Plaintiff has admitted and accepted that the Applicant is the owner of the said Plot and that, at the highest, the defendants merely have a leasehold interest in the said Plot, which is subject to, *inter alia*, the Lease Deed executed between the Plaintiff and the Defendants.** In view of the categoric position taken by the Plaintiff, it is respectfully submitted that the captioned Interim Application ought to be allowed and the reliefs sought therein ought to be granted.

(emphasis added)

4) Thus, in view of the contention raised in the Interim Application, Affidavit in Reply and Affidavit in Rejoinder, the Interim Application is allowed in terms of Prayer Clause 'A' and 'B'.

5) Accordingly, the Interim Application is disposed of by declaring that the Defendants have a leasehold interest in the said Plot No.61, Vallabhnagar Co-op. Housing Society Ltd., JVPD Scheme, Vile Parle(W), Mumbai 400 056 in terms of the leasehold rights as contemplated by Lease Deed dated 5th February, 1966.

6) As it is an agreed position that the defendants have leasehold interest in the subject plot, the Sheriff has to take fresh steps for sale of said leasehold interest in the subject plot for recovery of the amount which is the subject matter of the Execution Application.

7) Accordingly, the Interim Application is disposed of in above terms with no order as to costs.

Sheriffs Report No.42 of 2025.

8) The Sheriffs Report is concerning the valuation report submitted by the valuer and concerning settling the terms and conditions in respect of conducting auction sale.

9) However, the said valuation report and terms and conditions of

the auction sale are on the basis that the plot as well as building is available for sale.

10) In view of the separate order passed today, in Interim Application (L) No.37135 of 2025 by which it has been determined that the Defendants have leasehold interest in the subject plot as per the terms of the Lease Deed dated 1st February, 1966, which can be sold in execution, the Sheriff shall file a fresh Sheriff's Report.

11) Accordingly, Sheriffs Report No. 42 of 2025 is disposed of.

12) As a result, fresh Sheriff's Report be filed and be placed on board on 10th December, 2025. To be shown fairly 'high on board'.

[MADHAV J. JAMDAR, J.]