



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1344 of 2025

[M/s. Gandhi Sales Corporation, through its Proprietor Shri Pramod Kumar
Gandhi and anr. ..vs.. Ku. Premalata D/o Kishorilal Banarasi]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. R. Prasad, Advocate for the petitioners

CORAM : ANIL L. PANSARE J.

DATED : 12-03-2025

Heard.

2. The challenge is to order dated 27-2-2025 passed below Exhibit 13 by the executing Court in Special Darkhast No. 117/2023. By the impugned order, the executing Court has issued warrant of arrest against the petitioners – judgment debtors for the amount due against them. The Court further ordered that on payment of full amount by the judgment debtors, it shall be released forthwith. The Court has directed decree holder to deposit the subsistence allowance for one month, if not already deposited.

3. Having heard learned counsel for the petitioners and having gone through the record, as also, the impugned order, it appears that the respondent – decree holder had moved before the executing Court for execution of decree dated 20-7-2023. The order indicates that despite sufficient time and opportunity to the petitioners – judgment debtors, they failed to deposit the amount. It appears that warrant of attachment of property was also issued. It further appears that in an appeal filed by the petitioners, the first appellate Court on an application filed by the petitioners to stay the decree, while allowing the application, directed petitioners to deposit amount of Rs. 8,04,421/-. The petitioners failed to comply the said

order as well and, therefore, the executing Court opined and rightly so, that there is no stay to the judgment and decree under execution.

4. The impugned order indicates that the petitioners are avoiding to make payment and have taken false plea before the executing Court. It was found by the trial Court that the plea taken by the petitioners that shop under question is occupied by third person was a false statement. Thus, it appears that the petitioners are avoiding the execution of decree and payment ordered therein. Accordingly, by the impugned order, the executing Court issued warrant of arrest.

5. Learned counsel for the petitioners submits that before issuing the warrant of arrest, executing Court ought to have issued notice and given opportunity to the petitioners to show cause why they should not be committed to the prison. In support, he has relied upon Section 51 as also Order 21 Rule 37 of the Civil Procedure Code, 1908 (for short 'the Code').

6. In my view, the executing Court has complied with the said provision. It had issued notices. The petitioners appeared but made attempt to avoid payment. Thereafter the impugned order came to be passed stating therein as to how the petitioners are avoiding the execution of decree. That being so, I do not find any reason to interfere with the impugned order in the supervisory jurisdiction.

7. Learned counsel for the petitioners has relied upon the judgment passed by the coordinate Bench of this Court in the case of ***Satish Ramchandra Shahapurkar Vs. Gorakshnath Madhavrao Pund [2010(1) AIR Bom R 591]*** where the Court found that, in the said case, before issuing warrant of arrest, show cause notice was not served upon the judgment debtor. Such is not the case here. The execution is filed to seek the Courts help by issuance of warrant of attachment of movable

and immovable property and also for arrest and detention of judgment debtors i.e. petitioners. Pursuant thereto show cause notice had been issued and petitioners appeared before the Court. They are adopting delaying tactics. Hence, I am not inclined to grant any relief. Nonetheless, if the petitioners are brought before the executing Court after being arrested in the execution of decree, the Court shall proceed to adopt procedure as envisaged under Order 21, Rule 40 of the Code.

8. With the above observations, the petition is dismissed.

9. At this stage, learned counsel for the petitioners makes a request to grant petitioners time of two weeks to comply order dated 5-11-2024 passed by the first appellate Court in Regular Civil Appeal No. 251/2023.

10. The petitioners carry a blame of avoiding the decree by playing mischief and, therefore, the request is refused. The petitioners, however, may make such request before the executing Court.

11. Writ petition is disposed of in above terms.

12. Copy of order be forthwith served on trial Court.

(Anil L. Pansare, J.)