



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5076/2022

Vijaykumar s/o Uttam Gosavi
...Versus...
Sandhya w/o Vijaykumar Gosavi and others

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

Court's or Judge's orders

Mr. Vinay Dahat & Mr. J.B. Kasat, Advocates for petitioner
Mr. R.G. Kavimandan, Advocate for respondent No.1

CORAM : ROHIT W. JOSHI, J.
DATE : 01/10/2025

1. The petition is filed under Articles 226 and 227 of the Constitution of India in order to challenge the order dated 05/05/2022 passed by the learned Joint Civil Judge, Junior Division, Chikhali on application for attachment of salary filed at Exh.39 in Regular Darkhast No.30/2014.
2. Perusal of the order indicates that the salary of the petitioner at the relevant time was Rs.41,557/-. The petitioner was working as a teacher at Smt. Dhannabai Deepchand Gangwal Technical High School, Kachner, which is 100% grant-in-aid school. The learned executing Court has issued order for attachment of salary for recovery of arrears of maintenance to the tune of Rs.3,94,988/-.
3. The learned Advocate for the petitioner contends that the impugned order is bad in law for want of territorial jurisdiction. Learned Advocate contends that the petitioner is an employee of a private school, although it is a grand-in-aid school. He contends that in case salary of a person who is not

a Government servant is to be attached, the Court having territorial jurisdiction over the place where the Salary Disbursing Officer has his office, is only competent to pass order of attachment of salary. According to the learned Advocate, the school where the petitioner is employee is situated within the territorial limits of the Court at Aurangabad and therefore, the learned Civil Judge, Junior Division, Chikhali did not have territorial jurisdiction to pass the order of attachment of salary. He further contends that the learned Civil Court has erred in treating the case of the petitioner as under Order 21 Rule 48 of the Code of Civil Procedure which is applicable only to a Government servant and not to an employee of private institution.

4. The contention of the learned Advocate for the petitioner *prima facie* appears to be correct. However, it needs to be mentioned that the order of attachment of salary is passed for recovery of arrears of maintenance. The petitioner was drawing a respectable salary of more than Rs.40,000/- per month. The salary attachment is only for an amount of Rs.9,000/- per month. The petitioner was in arrears of maintenance payable to his wife and children.

5. It is well settled that territorial jurisdiction is a matter of procedural aspect of jurisdiction of a Civil Court. Lack of territorial jurisdiction does not render an order inherently bad as is the case in case of an order passed without subject matter jurisdiction. The case therefore cannot be said to be one of lack of subject matter jurisdiction or inherent lack of jurisdiction.

6. Although the provision is not strictly applicable in the present case, for the purpose of considering as to whether discretion should be exercised while entertaining the present petition, guidance can be taken of Section 21 of the Code of Civil Procedure, which provides that an objection to territorial jurisdiction cannot be entertained by the appellate or the revisional Court unless it is raised at the earliest available opportunity and also if some prejudice on that count is demonstrated. Both the conditions should be satisfied. In the case at hand although objection to territorial jurisdiction has raised, there is absolutely no prejudice that is caused to the petitioner, in view of the impugned order, which is stated to be passed without territorial jurisdiction.

7. In that view of the matter, in the considered opinion of this Court, this is not a fit case for exercising writ jurisdiction or supervisory jurisdiction in favour of the petitioner. The writ petition, therefore, stands dismissed. No order as to costs.

(ROHIT W. JOSHI, J.)