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

WRIT PETITION NO. 7506 OF 2023

(Vishwajeet Manohar Deshmukh Vs. Sandeep Sharkarlal Sojrani)

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

Court's or Judge's orders.

Mr. S.M. Vaishnav, Counsel for the petitioner.

Mr. R.D. Dandwate, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
JANUARY 29, 2025

On 3/11/2023, following order was
passed :

“Heard Mr. Vaishnav, learned counsel for the petitioner.

2. The petition challenges the order dated 15/11/2022 (Page-23), passed by the learned Trial Court, granting application under order XXXVIII Rule 5 of the Code of Civil Procedure (hereinafter referred to as “CPC”) by directing the petitioner/defendant to furnish a security in the sum of Rs.19,07,000/- on or before 15/12/2022, failing which the shop No.B-3-201, B Wing, having a built up area 43.74 sq.mtrs., valued at Rs.8,40,000/- in Dreams Land Business Park would stand attached. The said order has been passed in a suit for recovery filed by the respondent for the aforesaid amount.

3. Mr. Vaishnav, learned counsel for the petitioner/defendant, contends that since the application under Order XXXVIII Rule 5 of CPC specified agricultural land bearing Bhumapan No.346, admeasuring 0.94 R situated at Mouza Jadka, Tahsil and District Amravati as the property to be attached, in view of the language of Order XXXVIII Rule 5 of CPC, the learned Trial Court, could not have directed attachment of the shop No. B-3-201 and doing so violates the mandate of Order XXXVIII Rule 5 of CPC.

4. *Upon instructions, the learned counsel for the petitioner makes a statement that during the pendency of the present petition, the petitioner shall not create any right, title or interest in the shop No.B-3-201 of any nature whatsoever, and the same shall stand as a security for the claim made by the respondent in view of the impugned order dated 15/11/2022, accepting which statement, issue notice for final disposal, returnable on 04/12/2023.*

5. *In view of the aforesaid statement, the effect and operation of the impugned order shall stand stayed till the returnable date.”*

2] As could be seen, the petitioner made a statement that during pendency of the present petition, the petitioner shall not create any right, title or interest of any nature whatsoever in shop no. B-3-201 and the same shall stand as security for the claim made by the respondent, in view of the impugned order dated 15/11/2022.

3] The learned Counsel for the petitioner, on instructions, submits that the statement may be continued pending suit, which, according to him, should serve the purpose.

4] The learned Counsel for the respondent is agreeable to such arrangement.

5] Thus, the purpose of petition will be served if the statement, so made, by the petitioner is continued pending suit. The statement is accordingly accepted.

6] In view thereof, the impugned order dated 20/10/2023 passed by the District Judge – 2, Amravati, in Misc. Civil Appeal No. 100/2022, loses its significance,

and accordingly, stands quashed and set aside accepting the statement, so made, by the petitioner.

7] The parties shall now co-operate with the trial Court to decide the suit expeditiously.

8] The petition is disposed of in above terms.
No costs.

(ANIL L. PANSARE, J.)

Sumit