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

WRIT PETITION NO. 1025 OF 2025

TARABAI Wd/o KANTILAL CHHALLANI AND OTHERS
VERSUS
SHYAMSUNDAR S/o DAMODHAR BAHETI AND OTHERS

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Mr. Sachin S. Deshpande, Advocate for the petitioners
Mr. Abhishek S. Shukla with Mr. Nischay G. Khapekar, Advocates for respondent nos.1 to 4.

CORAM : ANIL L. PANSARE, J.
DATE : MARCH 27, 2025.

1. Heard.

2. The petitioners/Judgment-Debtors have assailed three orders dated 05.11.2024 passed by learned Civil Judge, Junior Division, Mangrulpir, below applications Exhibit-80, 103 and 104 in Regular Darkhast No. 32/2008. By order below Exh.80, the executing Court has ordered to sell/auction the property which appears to have been attached in terms of Order XXI Rule 31 of the Code of Civil Procedure. By order below Exh. 103, the executing Court rejected the application filed by the petitioners/judgment debtors to deposit the amount (not quantified) in lieu of satisfying the decree. By order below Exh.104, the executing Court rejected the application filed by the petitioner to deposit an amount of Rs. 2,22,222/- along with interest in lieu of satisfying decree.

3. Having heard both the sides and having gone through the records, it appears that the suit filed by the respondents/decree holders came to be decreed vide judgment

and decree dated 13.10.1993. The operative part of the judgment reads as under :

> *"The suit of the plaintiff is decreed with costs:*
> *The defendant shall return the golden and silver ornaments, as mentioned in para 2 of the plaint, to the plaintiff by accepting amount of Rs.10,000/- from him.*
> *Decree be drawn up accordingly."*

4. As could be seen, the defendant i.e. predecessor of the petitioners, was ordered to return the golden and silver ornaments, as mentioned in paragraph 2 of the plaint, to the predecessor of the respondent No1 to 4, by accepting the amount of Rs. 10,000/-.

5. During the course of arguments, a query was made whether the petitioners have, at any time, made any attempt to comply with the decree, the answer is in negative and the reason for negative answer is that the petitioners do not possess the aforesaid ornaments.

6. This plea, as such, was taken by the petitioners in the subsequent proceedings filed against the judgment and decree passed by the trial Court, however, the petitioners failed to make out a case and ultimately the decree attained finality when second appeal filed by the petitioners was dismissed on 01.11.2007. Thus, this ground that the ornaments in question were not available with the petitioners, was turn down at every stage.

7. The respondents had already approached the executing Court for execution of the decree. The petitioners continued

their stand of non-availability of ornaments and therefore, the executing Court ordered attachment of the house property belonging to the petitioners. The executing Court has vide impugned order passed below Exh.80 has ordered the property to be sold.

8. Learned counsel for the petitioners has invited my attention to Rule 31 of Order XXI of the CPC, which reads as under :

> "**31. Decree for specific movable property.**
>
> ***(1)*** *Where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, of the movable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.*
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> ***(2)*** *Where any attachment under sub-rule (1) has remained in force for three months if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree- older, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of movable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.*
>
> ***(3)*** *Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of three months from the date of attachment, no application to have the property sold has been made,*

> *or, if made, has been refused, the attachment shall cease."*

9. As could be seen, sub-rule (1) of Order 31 of CPC provides that where a decree is for any specific movable, it may be executed by the seizure, if practicable, and further by delivery thereof to the party, to whom it has been adjudged or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

10. In the present case, the executing Court thought it proper to attach the property of the petitioners.

11. Sub-rule 2 of Rule 31 of CPC provides that where the attachment under sub-rule 1 has remained in force for three months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold and out of the proceeds the Court may award to the decree-holder, such amount as fixed by the decree to be paid as an alternative to delivery of movable property (in the present case, which is not fixed by the trial Court) and in other cases the compensation as it thinks fit and the balance amount, if any, shall be payable to the Judgment-debtor on his application.

12. Learned counsel for the petitioners submits that while exercising the jurisdiction under sub-rule 2 of Rule 31 of CPC, the executing court has to determine the amount of compensation first and then only can it put the property to sale. In support, he has relied upon the judgment passed by Vindhya Pradesh High Court, (now Madhya Pradesh) in the

case of ***Motilal Decree-holder .vs. Mandir Jankiniwas and another Judgment-debtors***, reported at ***AIR 1953 Vindhya Pradesh 20***. The Court held that the word "attachment" in sub-rule 2 refers to the attachment of the properties other than the specific movables as mentioned in sub-rule 1. The Court further held that once the property is attached, the Court should invite the parties to lead evidence on compensation payable to the Judgment-debtor (it should be decree-holder) for the non-delivery of the specific movables. The Court then proceed to opine that if ascertained amount of compensation is not paid by the Judgment-debtor within six months from the date of attachment of their property, then the executing Court can sell it.

13. Taking aid of the aforesaid finding rendered by the Single Judge of Vindhya Pradesh High Court, learned counsel for the petitioners submits that unless the compensation is decided the property could not be put to sell.

14. I do not find substance in the argument. With deepest respect I find myself unable to concur with the view taken by the Single Bench of Vindhya Pradesh High Court. Firstly because plain reading of sub-rule 2 of Rule 31 CPC would indicate that the coercive step is being taken for non-compliance of the decree, despite efforts made by the executing Court ; and secondly, the provision nowhere suggests that the amount of compensation will have to be ascertained first as there is no nexus of deciding compensation vis-a-vis price that property may fetch, if sold. What has been provided is that once a property is attached and remained in

force for three months and if the Judgment-debtor has not obeyed the decree, the decree-holder may apply to sell the attached property and upon such request, the property may be sold and out of the sale proceeds, the Court may award to the decree-holder such compensation as it thinks fit, and in other case, if the amount is not fixed in the decree, the balance amount, if any, be paid to the Judgment-debtor. Thus, there is nothing to suggest that unless the compensation is ascertained, the property could not be sold. In a given case, while putting the property for sell, the executing Court may simultaneously proceed to ascertain the compensation, which to my mind, is the recourse that should be adopted where the decree-holder has failed to comply the decree.

15. In the present case, the situation is more annoying in the sense the petitioners' plea that he/they were not in a position to comply the decree, is found to be a false plea taken for all these years i.e. from 1993 till January-2025. It is so, because on 13.01.2025, the petitioners filed before the executing court an objection under Section 47 of the Code against the order of sell passed by the executing Court. The petitioners have, in paragraph 5 of the application, ascertained a sum of Rs.25,00,000/- approximately, which according to them is the amount payable by the respondents. The petitioners have then pleaded that if respondent (decree-holder) would pay the amount of the decree along with interest, then the petitioners (Judgment-debtors) are ready to pay the value of the ornaments or ready to return the ornaments to the petitioners as per the decree. Thus, the petitioners have now come up with a case that they are ready

to return the ornaments to the petitioners as per the decree, if the respondents are ready to pay Rs.25,00,000/-, meaning thereby the ornaments are in their custody, whereas for all these years the respondents heve taken a false plea that they are not able to comply the decree for want of ornaments. This conduct is deprecated.

16. Therefore, and for the reasons stated above, the petition is dismissed with exemplary cost of Rs.50,000/- (Rupees Fifty thousand only) to be paid by the petitioners (Judgment-debtors) to respondent nos.1 to 4 (decree-holders) within four weeks from today.

17. The petition stands disposed of in above terms.

(Anil L. Pansare, J.)

Diwale