

Ajit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 417 OF 2025

WITH

INTERIM APPLICATION NO. 10323 OF 2025

IN

APPEAL FROM ORDER NO. 417 OF 2025

Mr. K. Maheshwara Rao

...Appellant

Versus

Nitin Kantilal Shah HUF

Thr. Its Mr. N. K. Shah And Ors.

...Respondents

WITH

WRIT PETITION NO. 1440 OF 2025

K. Maheshwara Rao

...Petitioner

Versus

M/s. Nitin Kantilal Shah HUF

Through Its Karta And Ors.

...Respondents

Mr. Vaibhav Ugle a/w Shubham D. and Prashant Mahajan, for the
Appellant in AO/417/2025.

Mr. B. V. Holambe Patil, for the Petitioner in WP/1440/2025.

Mr. Nagendrakumar Dubey, for Respondent Nos.1 to 3.

CORAM: N. J. JAMADAR, J.

DATE : 15th APRIL 2026

ORAL ORDER:

IN WRIT PETITION NO. 1440 OF 2025:

- 1.** Heard the learned counsel for the Petitioner.
- 2.** The challenge in this Petition is to an order dated 23rd December 2024 passed by the Executing Court, whereby the Executing Court

directed the execution of the decree by attachment and sale of the properties, i.e. Flat No.12, Plot No.101, Sector 16, Dhanalaxmi CHS Ltd., Koparkhairane, Navi Mumbai-400709, and Viento 701 B, Lodha Golf Links, Niljhe, Maharashtra-421204.

3. The objection of the Petitioner before the Executing Court was that the decree was passed against the judgment-debtor company and that the Petitioner had ceased to be a Director of the judgment-debtor company. The properties that were sought to be attached are the personal properties of the Petitioner and, thus, those properties could not be attached in execution of the decree passed against the company.

4. By the impugned order, the Executing Court directed attachment of the said properties observing, *inter alia*, as under:

"I have considered the senerio on record, it is admitted fact that when the interim order was passed Mr. K. Maheshwar Rao was the director and non-compliance of order is on record. Now in execution proceedings when all the exercise of closing the matter by judgment is over, he can not take shelter that the properties prayed for attachment are not of judgment-debtor company, but, are his personal properties and he is not judgment debtor."

5. Evidently, the Executing Court has not examined the issues:

- (i) Whether the subject properties are liable to be attached in execution of the decree put to execution in Special Darkhast No.47 of 2024,
- (ii) whether the properties sought to be attached are the properties of the judgment-debtor company or the personal properties of the

Petitioner?, (iii) Whether the subject properties are liable to be attached in execution of the decree passed against the company?, (iv) Whether a case for piercing the corporate veil was made out?

6. In these circumstances, this Court in the exercise of its writ jurisdiction, is not expected to delve into the aforesaid relevant questions as a Court of first instance would to do. Therefore, it will be appropriate to remit the application (Exhibit-12) for a fresh determination to the Executing Court after providing an opportunity of hearing to the parties and considering the material on record, including the pleadings filed by the parties in the Suit as well as the execution proceedings.

7. The Petition thus stands allowed.

8. The impugned order stands quashed and set aside. The Application for attachment of the subject properties (Exhibit-12) stands remitted back to the Executing Court for afresh decision on merits and in accordance with law.

9. The Executing Court shall consider the entire pleadings in the Suit, the execution proceedings, as well as the documents placed on record and decide the application as expeditiously as possible, after providing an opportunity of hearing to the parties.

10. The parties shall appear before the Executing Court on 27th April 2026.

11. It is clarified that this Court has not entered into the merits of the matter and all the contentions of all the parties are kept open for consideration by the Executing Court.

12. Till the decision on the application for attachment of the properties, the following properties shall not be sold, transferred or alienated nor any third-party interest be created therein:

- 1) Flat No.12, Plot No.101, Sector 16, Dhanalaxmi CHS Ltd.,
Koparkhairane, Navi Mumbai-400709, and
- 2) Viento 701 B, Lodha Golf Links Niljhe, Maharashtra-421204

IN APPEAL FROM ORDER NO. 417 OF 2025:

13. Stand over to 28th April 2026 at 3.00 p.m.

[N. J. JAMADAR, J.]