



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

WRIT PETITION NO. 1224 OF 2026

Sau. Kiran Ravindra Nakaskar,
Age : 51 Years, Occu. : Household,
R/o. 11, Lalit Colony, Dastur Nagar,
Amravati, Dist. Amravati.

.... Petitioner

VERSUS

1. Girdhar Fakirchand Agrawal,
Age : 58 Years, Occu. : Business,
R/o. New Radhakisan Plots,
Akola, Tq. & Dist. Akola.
2. Rambhau S/o. Daulatrao Patil,
Age : 72 Years, Occu. : Business,
Proprietor of Kulswamini Trading Co.
R/o. Near Renuka Mata Mandir,
Renuka Nagar, Akola.
3. Chandrashekhar S/o. Rambhau Patil,
Age : 44 Years, Occu. : Business,
Proprietor of Chhatrapati Traders, Akola.
R/o. Near Renuka Mata Mandir,
Renuka Nagar, Akola.

.... Respondents

....
Advocate for Petitioner : Mr. Yash Venkatraman
Advocate for Respondents : Mr. S.A. Mohta
....

CORAM : PRAFULLA S. KHUBALKAR, J.

Dated : 06th MARCH 2026

JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.
3. By this petition, the petitioner assails common order dated 24.12.2025, passed by Joint Civil Judge Senior Division, Akola, on applications at Exhibit 70 and 71, filed by the petitioner-objector in the execution proceedings bearing Special Darkhast No.06 of 2019.
4. Respondent No.1 is the decree holder, who has filed execution proceedings bearing Special Darkhast No.06 of 2019, to execute the judgment and decree passed by the Appellate Court, which has allowed the Special Civil Suit bearing No.67 of 2006. In the execution proceedings, an objection vide Exhibit 71 came to be filed by the objector (petitioner herein), under Section 47 read with Order XXI Rule 53, 54, 55 and 57 of the Code of Civil Procedure, 1908 (for short, "C.P.C."). The objector had also filed a separate application at Exhibit 70, seeking stay to the execution proceedings till decision of her objection. Both these applications were opposed by the decree holder and came to be rejected by common order dated 24.12.2025, which is subjected to challenge by way of instant petition.

5. Mr. Yash Venkatram, learned Advocate for the petitioner-objector vehemently submitted that the objector is co-owner of the suit property having undivided share and is entitled to seek adjudication of claims by raising objections to attachment of property under Order XXI Rule 58 of C.P.C. He submitted that the objector has also filed a separate suit bearing Spl.C.S. No.125 of 2023, with respect to her independent rights over the suit property, which is subject matter of adjudication and therefore, the execution proceedings were required to be stayed till the decision of said civil suit. He submitted that the petitioner-objector, being daughter of judgment debtor, is entitled to raise an objection to attachment of property, in which she has got rights and since the order is passed without considering the purport of provisions of Order XXI Rule 58 of C.P.C., it is sustainable.

6. Mr. S.A. Mohta, learned Advocate for respondent Nos.1 to 3 strongly opposed the petition and vehemently submitted that the objection raised by the petitioner deserved to be rejected since the petitioner was not a party to the decree, which is sought to be executed. The petitioner, being a third person, had no right to object to the execution of decree. By inviting attention to the provisions of Order XXI Rule 58 Sub-Rule 5 of C.P.C., he submitted that the objector's alleged rights claimed in the independent suit, which is

already filed by her, would be adjudicated and therefore, the objection to the execution proceedings is baseless. In support of his submissions, he placed reliance on recent judgment of the Hon'ble Supreme Court in the case of *Periyammal (Dead) Through LRs. and Others Vs. V. Rajamani and Another Etc., Decided on 06th March 2025, in Civil Appeal Nos.3640-3642 of 2025*

7. While considering the rival contentions of the parties, it has to be noted that the petitioner was not party to the suit and the judgment and decree under execution. The petitioner claims to have got some right in the property of the judgment debtor, which is subject matter of attachment in the execution proceedings. It has to be noted that the petitioner's alleged rights are subject matter of adjudication in Spl.C.S. No.125 of 2023, which is already filed by the petitioner. It has to be noted that the execution proceedings i.e. Special Darkhast No.06 of 2019, is instituted for execution of a money decree dated 01.01.2019, passed by the Appellate Court in Regular Civil Appeal No.170 of 2015. In the execution proceedings, the decree holder had filed a civil application for attachment of property. The said application is allowed and warrant of attachment is also issued. At this stage, the objector has filed the objection under Section 47 of C.P.C., alleging existence of certain rights in the suit property.

8. As regards the status of civil suit filed by the petitioner-objector i.e. Spl.C.S. No.123 of 2025, in response to a query by the Court, learned Advocate for the petitioner was unable to point out any progress in the said civil suit. However, learned Advocate for the respondents submitted that there is no progress in the civil suit and it is simply kept pending after it was filed. As such, in view of the overall conduct of the petitioner, it appears that the objection under Section 47 of C.P.C., filed in the execution proceedings at the stage of issuance of warrant of attachment is only to somehow prolong the execution proceedings and deprive the decree holder to enjoy the fruits of decree.

9. It is beneficial to refer here to the recent enunciation of legal position by the Hon'ble Supreme Court in the case of **Periyammal (Supra)**, wherein the Hon'ble Supreme Court has reiterated the guidelines and directions with respect to the conduct of execution proceedings. The relevant paragraph from the said judgment is reproduced below.

“73. It is worthwhile to revisit the observation in Rahul S. Shah (Supra) wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below :

42.

42.1.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.”

10. Having regard to the position of law and the factual aspects of the instant case as referred above, I am of the considered view that the objection raised by the petitioner deserved to be rejected. A perusal of the impugned order reveals that the trial court has given due consideration to all the relevant factual and legal aspects and by a well reasoned order, rejected the objection. The reasons recorded by the trial court are just and proper and based on a plausible view. I do not find any perversity with the impugned order warranting interference on any count.

11. In view of the above mentioned factual and legal aspects, no indulgence is warranted under Article 227 of the Constitution of India with the impugned order. Hence, The writ petition is dismissed with no order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE