



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 7784 OF 2025  
IN  
COMMERCIAL EXECUTION APPLICATION NO. 30 OF 2023

SUNITA ISHWAR SAMOTA & ANR )...APPLICANTS

IN THE MATTER BETWEEN  
SANMAN TRADE IMPEX PVT LTD )...CLAIMANT /  
V/s. )  
DECREE HOLDER

BABA MUNGIPA STEEL INDUSTRY AND )  
OTHERS )...RESPONDENTS

Mr.Ryan D'Souza a/w Mr.Shivam Laturiya, Ms.Pranchali Kandre i/b  
APS Law Associates, Advocates for the Applicants.

Mr.Vivek Kantawala a/w Mr.Amey Patil, Mr.Manav Kantawala i/b M/s.  
Vivek Kantawala and Co., Advocates for the Claimant/Decree Holder.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 19<sup>th</sup> JANUARY 2026  
PRONOUNCED ON : 30<sup>th</sup> JANUARY 2026

ORDER :

1. This Interim Application filed under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (the “CPC”) by the wife and the son of Judgment Debtor No.3 seeks to exclude Flat No.203, A-Wing, 2<sup>nd</sup> Floor, Silver Birch Cooperative Housing Society Ltd, Vasant Gardens, Swapna Nagari, Mulund West, Mumbai 400080 (the “said flat”) from the schedule of properties in the Execution Application No.30 of 2023

attached pursuant to a Warrant of Attachment dated 1<sup>st</sup> February 2024 and to set aside the said Warrant of Attachment as well as the Proclamation of Sale dated 15<sup>th</sup> July 2025 insofar as it concerns the said flat.

2. Mr. D'Souza, learned Counsel appearing for the Applicants, has submitted that earlier the Claimant/Decree holder had filed a Commercial Summary Suit No.153 of 2015 against Baba Mungipa Steel Industry Pvt. Ltd. and its directors and the Respondent No. 3 was one of the two directors against whom the Suit was filed. The Commercial Summary Suit culminated into a decree dated 30<sup>th</sup> July 2018 pursuant to order passed in Summons for Judgment No.39 of 2018 and the present Execution Application filed on 19<sup>th</sup> September 2019 seeks execution of the said decree against the Respondents.

3. That, on 9<sup>th</sup> March 2020, out of love and affection the Respondent/Defendant No.3 had executed registered Gift deed in favour of his wife, the Applicant No.1 and his son the Applicant No.2 who became the joint owners of the said flat. It is submitted that in the course of the execution proceedings a Warrant of Attachment dated 1<sup>st</sup> February 2024 attaching the said flat was issued, pursuant to which the

said flat was attached, after which on 10<sup>th</sup> March 2025, which is more than a year after the attachment, a warrant of sale was issued and on 19<sup>th</sup> March 2025 the warrant of sale was lodged for issuance of proclamation of sale and the proclamation of sale was issued in May 2025.

4. On 30<sup>th</sup> June 2025, when an objection was taken to the proclamation of sale on the ground that there was a Gift deed in favour of the Applicants, the Commissioner for taking Accounts observed that the title could not be decided finally and only included the Applicants' claim in the Proclamation of Sale list. The proclamation of sale was settled formally on 15<sup>th</sup> July 2025 with a note about the Applicants' claim. It is submitted that, thereafter, on 1<sup>st</sup> October 2025, this application under Order XXI Rule 58 of the CPC has been filed.

5. Mr. D'Souza has submitted that the Interim Application seeking to exclude the said flat from the schedule of attached properties deserves to be allowed on two grounds. Firstly Mr. D'Souza has submitted that the claim in the Summary Suit was for payment of invoices raised upon the Defendant No.1 company and although in the demand notice as well as in the Suit the Defendant No.3 along with the

Defendant No.2 were arrayed but only as directors and not personally or as guarantors. Mr. D'Souza submitted that the property of a director cannot be sold to satisfy a decree against the company as the company is a separate legal entity, unless the directors are specifically held liable by an order of the Court.

6. That in the present case the Respondent no.3/Defendant No. 3 was impleaded in his capacity only as a director and not in his personal capacity. Mr. D'Souza has submitted that the decree has to be interpreted and construed as has been passed against the company and not against the personal assets of its Director. Mr. D'Souza has relied upon the decision of the Orissa High Court in the case of *Hrushikesh Panda v. Indramani Swain and Another*<sup>1</sup> submitting that the executing Court has jurisdiction and powers under Section 47 of the CPC to construe a decree in order to ascertain its precise meaning and that general direction making the Defendants 'jointly and severally liable', no doubt *prima facie* imposes a personal liability on all the Defendants but the said words are not conclusive of the question and empower the executing Court to construe the decree and in case of doubt, benefit must be given to the Judgment Debtor in this regard. Mr.D'Souza has

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1 AIR 1987 Ori 79

submitted that, therefore, a director is not liable to pay the debts incurred by the company although an action against the defaulting director may be brought by the company itself or where the breach of duty complained of is a breach fiduciary duty by a member suing in a derivative action on behalf of himself and all other members of the company, the directors liability for breach of fiduciary duty by misfeasance proceedings in the companies winding up is well known.

7. Mr.D'Souza has submitted that the liability of directors even in common law is only where they have been guilty of tort towards the creditors as well as breach of duty owed to the company and would be personally liable to persons who lent money to the company only if they obtain the loan by fraudulent misrepresentations. Mr.D'Souza has submitted that, therefore, it is obvious that the directors are generally immune from the liability to the creditors of their company.

8. Mr.D'Souza has submitted that in the case before the Orissa High Court it was held that no personal liability is attached to the director in his individual capacity and the executing Court was therefore right in holding that the personal properties of the director could not be attached. Mr.D'Souza has submitted that, therefore, this Court may

raise the attachment in respect of the said flat and set aside the warrant of attachment as well as the proclamation of sale.

9. Secondly, Mr. D'Souza has submitted that the said flat was purchased by the Defendant No.3 on 30<sup>th</sup> August 2005 and draws this Court's attention to a copy of the Agreement for Sale at Exhibit A to the application. Mr.D'Souza submits that, thereafter, by a Gift deed dated 9<sup>th</sup> March 2020 at Exhibit B to the application, the said flat was gifted by the Defendant No.3 out of love and affection to the Applicants. It is submitted that, therefore, the Applicants' are the lawful joint owners of the said flat and the Defendant No.3 has no right, title or interest in the said flat. That, the Applicants have been in possession of the said flat as their home.

10. Relying upon the decision of the Hon'ble Supreme Court in the case of *Maya Devi v. Lalta Prasad*<sup>2</sup>, Mr.D'Souza has submitted that under Order XXI Rule 58 of the CPC conjointly read with Rules 97 to 104 of the CPC, it becomes clear that all questions raised by the objector have to be comprehensively considered on their merits. That, Order XXI of the CPC proscribes the filing of a separate Suit in the case

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2 (2015) 5 SCC 588

of a simple money decree as this one and prescribes that all relevant questions shall be determined by the executing Court. That, objections under Order XXI of the CPC should be meaningfully heard so as to avoid the possibility of any miscarriage of justice. It is submitted that the Decree Holder cannot execute the decree against properties belonging to persons who are not Judgment Debtors. Mr.D'Souza has submitted that, therefore also, the Interim Application be allowed.

11. On the other hand, Mr.Kantawala, learned Counsel appearing for the Claimant/Decree Holder, has submitted that not only the correspondence in respect of the unpaid invoices is with the Defendants but also the demand notice was raised against the Company as well as the other two Defendants. That, as can be seen from the decree dated 30<sup>th</sup> July, 2018 although the Defendants including the Defendant No.3 had entered appearance and the Summons for Judgment was served upon them, they have failed to file reply and even no leave to defend application had been filed. In paragraph 3 of the said order it is recorded that the Defendants and their Advocates are absent and the Single Judge has gone on to hold that, in the circumstances, it appears that the Defendants despite having appointed their Advocate do not appear to be interested in seeking leave to defend. Accordingly, based

on the Compilation of Original Documents consisting of Original purchase order of 2012, the invoices annexed to the Compilation of documents indicated that diverse quantities of M.S. Scrap was supplied at the rates for the price mentioned thereon and letter dated 7<sup>th</sup> September 2012 from the Defendants admitting of financial crisis and seeking time to pay the amounts due signed by the Director, as well as the Plaintiff's demand dated 11<sup>th</sup> April 2014, postal cover containing the same appears to have been refused to receive by the Defendants, and observing that the Defendants having failed and neglected to seek leave to defend the Suit despite sufficient opportunities to do so, holding that the Plaintiff is entitled to a judgment, the Court decreed the Suit in terms of prayer clause (a) which reads thus:

*“(a) For Judgment and decree against the Defendants and in favour of the Plaintiff for Rs.1,91,08,384.02 (Rupees One Crores Ninety One Lakhs Eight Thousand Three Hundred Eighty Four and Paise Two Only) as per the particulars of claim annexed at Exhibit - G to the Plaintiff and for future interest on Rs.1,17,75,782,20/- at the rate of 24% per annum or at such other and further rate as this Hon'ble Court may deem fit and proper from filing of the Suit till payment and or realization and for costs of the Suit.”*

12. It is submitted that the decree is against all the three Defendants including the Defendant No.3. That, the Defendants No.2 and 3 are not

only the directors but also the only shareholders of the Defendant No.1 company holding 25,000 equity shares each. That, each and every correspondence has been signed by a director including the one dated 7<sup>th</sup> September 2012 admitting financial difficulty. That, the executing Court cannot be go behind the decree and has to execute a decree as it is, unless the decree is set aside or modified. That, neither any application under Order IX Rule 13 of the CPC has been made nor any appeal has been filed against the decree.

13. It has been submitted that, although it is settled law that a company is a separate legal entity but in the facts of this case the decree is against all the three Defendants including the Defendant No.3, and that since the said two directors are also the shareholders, this Court is empowered under Order XXI Rule 58 of the CPC to dismiss the application and direct sale of the said flat for recovery of the outstanding amount under the decree.

14. Mr. Kantawala has further submitted that even the Gift Deed dated 9<sup>th</sup> March 2020 by the Defendant No.3 in favour of the Applicants is a fraudulent transfer under Section 53 of the Transfer of Property Act, 1882 and the same has been made with an intent to

defeat or delay the creditors of the transferor and the same is voidable at the option of the creditor so defeated. That, the Applicants are not transferees in good faith or for consideration as there was no consideration for such transfer and neither the Defendant No.3 nor the Applicants have approached the cooperative housing society to record the Gift Deed for transfer of shares and change of membership in its records.

15. Mr.Kantawala has submitted that the Execution Application for the decree dated 30<sup>th</sup> July 2018 was filed on 19<sup>th</sup> September 2019 and it is only to defeat the Judgment Creditor's claim, that the Gift deed has been entered into on 9<sup>th</sup> March 2020. The Defendant /Judgment Debtor No.3 is the husband of Applicant No.1 and the father of Applicant No. 2 and was in full knowledge that he had suffered the decree, and that there was an Execution Application which was pending not only against the company but also against him, and therefore, only to defeat the decree, this transfer in the form of a Gift deed has been effected. Mr. Kantawala has submitted that, therefore, this Court may dismiss the application.

16. As regards the decision of the Orissa High Court in the case of *Hrushikesh Panda v. Indramani Swain and Another (supra)*, Mr. Kantawala has submitted that, in that case, a joint written statement had been filed by the Defendants denying the liability to the Plaintiff and the personal liability of the Defendant No.2 was also denied and their case was that the Plaintiff was overpaid by the company and thus was to refund the excess amount paid to him. That, the Defendants accordingly had instituted a separate money Suit against the Decree Holder on that ground. Mr. Kantawala has submitted that it is in these facts that the Orissa High Court observed that the general direction making the Defendants jointly and severally liable are not conclusive of the question and the executing Court is empowered to construe the decree and in case of doubt benefit must be given to the judgment debtor and held that no personal liability was attached to the director in his individual capacity.

17. Mr. Kantawala has submitted that as regards the decision of the Hon'ble Supreme Court in the case of *Maya Devi v. Lalita Prasad (supra)* is concerned, the facts are again distinguishable in as much as the original owner of the Suit property had executed a registered power of attorney in favour of his wife and the other version of facts was that the

original owner never had ownership of the Suit property at all and his wife was the original owner vide registered general power of attorney sale. That, in such a situation, objection was raised under Order XXI Rule 58 of CPC against the attachment order in execution proceedings. Mr. Kantawala has submitted that in fact in order to avoid the possibility of any miscarriage of justice this Court should exercise its powers under Order XXI Rule 58 of the CPC and decide on the fraudulent nature of the Gift deed and set it aside in view of Section 53 of the Transfer of Property Act, 1882, and hold that the said transfer is without consideration with intent to defraud the creditors including the Judgment Creditor and voidable at the option of the Judgment Creditor and sustain the attachment and direct sale of the said flat pursuant to the proclamation of sale.

18. I have heard the learned Counsel for the parties extensively and considered the rival contentions.

19. The facts not being in dispute this Court proceeds to consider the two grounds as raised by the Applicants straightforward. There is no doubt that the Judgment Debtor No.1 is private limited company and is a separate legal entity distinct from its shareholders and directors. It is

settled law that the liability of a company cannot be foisted on the shareholders or directors although the company can take out misfeasance proceedings against the directors in a winding up order for fraudulent acts. The corporate veil can be pierced in the case of fraud played on the company. Until any act of fraud or intent to defraud the Company is established, the directors cannot be held liable for the actions or liabilities of the company. That is the reason businesses are conducted by incorporating companies to limit the liability of the shareholders and also of the directors.

20. However, it is also true that in the facts of this case the decree dated 30<sup>th</sup> July 2018 has been passed also against the two directors of the Defendant No.1 company. None of the Defendants appeared when the Summons for Judgment was listed for hearing and no reply was filed on behalf of the Defendants nor any application for leave to defend was filed although appearance was entered. Not only that, no application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (“CPC”) for setting aside the decree or even an appeal for setting aside the decree was filed by the Judgment Debtors. The present application has only been filed by the wife and the son viz. the donees under the Gift deed by the Judgment Debtor no.3. Therefore, on the

basis of the Compilation of Original Documents tendered on behalf of the Plaintiffs consisting of the Original Purchase order of 2012, Invoices annexed to the compilation indicating diverse quantities of supply of M.S. Scrap at the rate sent for the prices mentioned therein as well as letter dated 7<sup>th</sup> September 2012 from the Defendant No.1 signed by one of the directors admitting of financial crisis and seeking time to pay the amounts due, as well as the demand notice dated 11<sup>th</sup> April 2014 and holding that the Defendants have failed and neglected to seek leave to defend the Suit despite sufficient opportunities to do so, the Suit was decreed in terms of prayer clause (a) quoted above. The learned Single Judge after considering the various documents has passed the decree. An Execution Court, it is well settled, cannot go behind a decree, although it is trite that under Section 47 of the CPC it is the duty of an executing Court to construe a decree and order to ascertain its precise meaning and as there is no general rule for construing decrees, each case must depend upon its own facts. The decision of the Orissa High Court is, however, clearly distinguishable and would not assist the case of the Applicant. In the said case, as rightly pointed out by Mr.Kantawala, there was a joint written statement that had been filed by the Defendants denying the liability to the Plaintiff and the personal liability of the Defendant no.2 was also denied, and their case was that

the Plaintiff was overpaid by the company and thus, was to refund the excess amount paid to him. That, the Defendants, accordingly, had instituted a separate money suit against the decree holder on that ground. In the facts of the present case, as noted and which is not in dispute, is that despite entering appearance, none of the Judgment Debtors appeared when the summons for judgment was listed for hearing and neither any reply nor any application for leave to defend was filed. The learned Single Judge of this Court, after considering various documents, including Purchase Order, Invoices, letter dated 7<sup>th</sup> September 2012 admitting liability, as signed by one of the directors and holding that the Defendants having failed and neglected to seek leave to defend the Suit, despite sufficient opportunities to do so, decreed the Suit against the Defendants.

21. It is also pertinent to note that the Defendant No.3 is not the Applicant herein. Although earlier on 3<sup>rd</sup> November 2025 Counsel had appeared on behalf of the Defendant No.3, Judgment Debtor, who is arrayed as Respondent No.3 herein, however during the hearing of this matter, none had appeared for the husband Defendant No.3 nor any reply has been filed. This ground ought to have been agitated by the Defendant No.3 and not by the Applicants who are not even party to the Suit or the execution proceedings.

22. Neither any appeal has been filed against the judgment and decree nor any application has been filed under Order IX Rule 13 of the CPC. Therefore, in my view, it would, on this ground, not be possible to interfere with the decree on the application made on behalf of the wife and the son of the Judgment Debtor no. 3.

23. Further, the learned Counsel for the Execution Applicant has also alleged fraudulent transfer under Section 53 of the Transfer of Property Act, 1882, and submitted that the said issue would need to be adjudicated by this Court under Order XXI Rule 58 of the CPC. Mr.Kantawala for the Judgment Creditor has urged this Court to decide on the issue of the fraudulent nature of the Gift deed exercising powers under Order XXI Rule 58 of the CPC and if it is found by this Court that the transfer is fraudulent, to dismiss this application and sustain the attachment and direct sale of the said flat pursuant to the proclamation of sale.

24. Therefore, the question as to whether it can be said that there has been a fraudulent transfer by the Judgment Debtor No.3 to the Applicants on 9<sup>th</sup> March 2020 whereby the said flat was transferred by way of a Gift deed to the Applicants especially considering the fact that the Execution Application for execution of the decree dated 30<sup>th</sup> of July

2018 has been filed on 19<sup>th</sup> September 2019 of which the Defendant No.3 who is the husband of the Applicant No. 1 and father of the Applicant No. 2 had knowledge, would need to be determined.

25. However, before proceeding with the respective contentions on this issue, it will be useful to consider the judicial exposition on Order XXI Rule 58 of the CPC which deals with the procedure for adjudication of claims or objections to the attachment of property and as to how a decision should be arrived at when an application under Order XXI Rule 58 comes up for adjudication. Order XXI Rule 58 of the CPC reads as under:-

58. Adjudication of claims to or objections to attachment of, property.—  
 (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such, claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or

their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
- (b) disallow the claim or objection; or
- (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or
- (d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such-suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

26. The Division Bench of the Hon'ble High Court of Madras in the case of *Southern Steelmet and Alloys Ltd vs. B.M. Steel, Madras*<sup>3</sup> has held that under the amended Order XXI Rule 58, a full enquiry into all allegations including questions relating to right, title or interest in the

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3 1978 SCC OnLine Mad 28

property attached which arise between the parties to the proceeding is necessary and that the said provision mandates that the court enquiring such a claim petition shall determine such questions. There is also an embargo on the institution of a separate suit for the determination of such questions. Sub-clause (4) of Order XXI, Rule 58 throws light upon the nature and character of the decision ultimately to be arrived at by the Civil Court on such adjudication under Order XXI Rule 58 of the CPC. It was also held that after the claim or objection has been adjudicated upon, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree and though perforce an order is contemplated to be passed under Order XXI Rule 58 of the CPC, that order has the legal effect of a decree. Such an order is a substitute for a decision resulting in a decree in an ordinary litigation, regarding the adjudication of rights, privileges and duties of a party to a legal proceeding.

27. Section 53 of the Transfer of Property Act, 1882, refers to fraudulent transfer and provides that every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

28. In the case of ***SBI Home Finance Ltd. vs. Credentials Finance Ltd.***<sup>4</sup> a Division Bench of this court had the occasion to consider Order XXI Rule 58 of the CPC in the context of Section 53 of the Transfer of Property Act, 1882. It was observed that under Order XXI Rule 58 of the CPC every claim or objection has to be adjudicated and no substantive Suit can be brought for such adjudication. That, under the present procedure for determination of claims to property attached in execution, or even before attachment, when a claim or objection to property or attachment is made, the Court has to finally adjudicate such claim or objection. If upon such claim or objection being preferred, the creditor raises the issue that such claim or objection has no substance because the transfer to the claimant / objector is hit by Section 53 of the Transfer of Property Act, 1882, then the said issue also has to be adjudicated as it would involve adjudication of the title or right to or interest in the property. That, the Court deciding the claim would have to adjudicate all these issues and render a final decision which would have the force of a decree subject to appeal. The Division Bench has also considered the scope of Section 53 of the Transfer of Property Act, 1882, by observing that Section 53 of the

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<sup>4</sup> AIR 2001 Bom 179

Transfer of Property Act, 1882, enables the creditor to avoid the transfer of immovable property which has been made with intent to defraud, defeat or delay and such a transfer would be voidable at the option of any creditor so defrauded, defeated or delayed.

29. In the case of *Velchand Sawaji Marwadi vs. Sitaram Tukaram*<sup>5</sup> this Court has observed that transfer to a near relative under Section 53 of the Transfer of Property Act, 1882, is a hollow transaction but a transfer nevertheless and Section 53 can be applied as it does not prevent the Court from considering whether the conditions of Section 53 are satisfied.

30. From the aforesaid elucidation it emerges that under Order XXI Rule 58 of the CPC the Executing Court is empowered to adjudicate upon the claim in a comprehensive manner covering the questions relating to right, title or interest over the property attached which are to be dealt with just as a suit including the inquiry with regard to fraudulent nature of the transaction, or the bonafides of the transferee.

31. The issue that would therefore need to be decided is whether or not the Gift deed dated 9<sup>th</sup> March 2020 by the Judgment Debtor No.3 in

<sup>5</sup> AIR 1925 BOM 287

favour of the Applicant is a fraudulent transfer under Section 53 of the Transfer of Property Act, 1882 with an intent to defeat or delay the Judgment Creditor.

32. The decree is dated 30<sup>th</sup> July 2018 passed against the three Defendants including the husband and father (Defendant / Respondent no.3) of the Applicants. The letter dated 7<sup>th</sup> September 2012 from the Defendants admitting financial crisis seeking time to pay the amounts due is signed by the director. The Plaintiff's demand letter dated 11<sup>th</sup> April 2014 is addressed to all the three Defendants / Respondents including the Defendant / Respondent no.3. The Execution Application for execution of the decree has been filed on 19<sup>th</sup> September 2019 whereas the Gift Deed by virtue of which the Applicants are claiming ownership of the said flat is dated 9<sup>th</sup> March 2020. The Gift deed is a hollow/related party transaction coming at a time after the execution proceedings in relation to the decree in question, therefore, definitely raises serious doubts about the *bona fides* of the said transaction. Instead of taking steps to set aside the decree either by way of an application under Order IX Rule 13 of the CPC or by way of an appeal or by any other procedure known to law, the Defendant No.3 went ahead and transferred the said flat by way of a Gift Deed to the

Applicants after the execution proceedings. The Execution Applicant is the Judgment Creditor of the Defendants including the Defendant no.3 / Respondent no.3 and the effect of this transfer is to prevent the said flat from being reached by the creditors including the Judgment Creditor. In view of the Gift Deed as it stands, the property would not be available to the creditors including the Judgment Creditor and the effect of the transfer would be to defeat or delay the creditors including the Judgment Creditor. The transaction lacks bonafide. I am, therefore, of the view that there has been a fraudulent transfer by the Judgment Debtor no.3 to the Applicants on 9<sup>th</sup> March 2020 whereby the said flat was transferred by way of a Gift Deed to the Applicants and the Judgment Creditor viz. the Execution Applicant is entitled to avoid such a transfer under Section 53 of the Transfer of Property Act, 1882, to be treated as property of the Judgment Debtor no.3 / Respondent no.3 and to continue the attachment until the sale of the said flat.

33. The elucidation on the procedure for adjudication of claims or objections to the attachment of property under Order XXI Rule 58 of the CPC as above, only makes it clear that the investigation under Order XXI Rule 58 of the CPC should be full, realistic and after giving adequate opportunities to the parties concerned to prove their

respective claims, right, title and interest in the property attached. In the case at hand, it is an admitted position that the Defendant no.3 was the owner of the said flat and that the Applicants have in paragraph 1 of the application clearly submitted that they have derived their title to the said flat under a registered Gift Deed dated 9<sup>th</sup> March 2020 executed in their favour by the Defendant no.3. Therefore, in my view, there is no necessity for this Court to direct the parties to go for trial. The words used in Order XXI Rule 58 of the CPC are very clear that the adjudication should take place and it also shows that the discretion is vested with the Court to decide in what manner the adjudication should take place. In case the Court is satisfied, which this Court is on the basis of material before this Court, with the available documents that have been put forth before the Court, directing the parties to go in for a trial would be redundant.

34. It is an admitted position that the Defendant No.3 has executed the Gift Deed after passing of the decree and during the pendency of the execution proceedings. Unless the Defendant No.3 establishes that the transfer was in good faith and not to defeat the execution, in my view the attachment of the said flat cannot be excluded or raised. No material has been placed before this Court that the Gift Deed is not to

defeat the execution of the decree. In fact, the material is contrary to such a finding. It is clear in the facts of this case that the Gift Deed has been entered into being aware of and during the pendency of the execution proceedings that have been filed by the Execution Applicant against the three Judgment Debtors for which no further evidence would be required. In view thereof, there is nothing further required to be established by permitting evidence to be led. The timing and nature of the transaction as borne out from the record indicate that same has been effected with a view to defeat and delay the claim of the creditors. When it is patently demonstrated that in the Gift Deed relied upon by the Applicants that the transfer is made between the family members is only to defeat and delay the claim of the Judgment creditor, no further enquiry is necessary.

35. In view of the above, the case of *Maya Devi v. Lalta Prasad* (*supra*) relied upon by the learned Counsel for the Applicants, does not therefore further the case of the Applicants and in any event the said case is distinguishable on facts.

36. In fact, in my view, in order to avoid miscarriage of justice to the Execution Applicant and in exercise of powers under Order XXI of the

CPC, this Court having decided that the Gift Deed dated 9<sup>th</sup> March 2020 from the Judgment Debtor no.3 / Respondent no.3 / Defendant no.3 to the Applicants is a fraudulent transfer under Section 53 of the Transfer of Property Act, 1882, with intent to defraud the creditors including the Judgment Creditor, the same is voidable at the option of the Judgment Creditor. I am, therefore, inclined to dismiss this application and sustain the attachment and direct sale of the flat pursuant to the proclamation of sale.

37. Ergo, the Interim Application seeking exclusion of the said flat for attachment deserves to be rejected. The Interim Application is, accordingly, dismissed.

38. The execution to proceed as per law and the Sheriff of Bombay to take steps in furtherance of the Proclamation of Sale dated 15<sup>th</sup> July 2025.

**(ABHAY AHUJA, J.)**

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