

MHKO050061842023



ORDER BELOW EXH.33 IN
SPECIAL DARKHAST NO.32/2023
(Passed on 10. 01. 2025)

This is an application under Order XXI Rule 97 of the Code of Civil Procedure, 1908 by the obstructionist.

02. Perused the application and reply thereon. Heard learned counsel for both sides. Perused the written notes of argument filed at Exh.48 by the obstructionist.

03. Learned counsel for the obstructionist submitted that property bearing Plot No.2 ad-measuring area 6400 sq.ft. out of Gat no.860, ad-measuring area 0.34 HR, situated at Kabnoor, Tal. Hatkanangale, Dist. Kolhapur (for the sake of brevity, hereinafter referred to as 'suit property') was originally owned by judgment debtor – Ajay Gurav and two other persons namely – Rajani Gurav and Akshay Gurav. On dt.28.04.2023 obstructionist namely – Raju Ajar has entered into registered agreement for sale of the suit property with all of them for consideration of Rs.19,52,000/-. Accordingly, obstructionist paid the full sale consideration amount to the judgment debtor and above-said other persons. Moreover, on the same day i.e. on dt.28.04.2023 judgment debtor and the other above-said two persons have executed registered power of attorney in favour of obstructionist and handed over possession of the suit property to the obstructionist. Thereafter, on

dt.17.10.2023 obstructionist got executed registered sale deed of the suit property on the basis of above-said registered power of attorney. Accordingly, obstructionist became the absolute owner of the suit property. However, in the meantime judgment debtor – Ajay Gurav and the plaintiff collusively instituted the suit bearing Spl. Civil Suit No.106/2023 and thereby obtained a collusive decree / award without informing to the obstructionist about the same. Moreover, obstructionist was not the party to the said suit. Therefore, Award passed in the said suit is not binding upon the rights of the obstructionist. As such, possession of the obstructionist in respect of suit property cannot be disturbed by means of present execution proceeding and suit property cannot be put for auction for the recovery of decretal amount as prayed. Hence, it is prayed that the decree / award shall not be executed against the suit property as it is owned by the obstructionist.

04. Application is resisted by the decree holder vide her reply at Exh.34. It is submitted that decree holder had instituted the suit bearing Spl. Civil Suit No.106/2023 on dt.27.07.2023. Thereafter, on dt.31.07.2024 court issued the order of maintaining status-quo in respect of the suit property against the judgment debtor. Similarly, on dt.22.03.2023 i.e. before the institution of the said suit, plaintiff had issued a publication in Daily Newspaper for restraining all the persons from entering into any agreement with the judgment debtor in respect of the suit property. Moreover, on dt.17.08.2023 and on dt.18.08.2023 decree holder had also filed the application with the Sub-Registrar, Ichalkaranji for restraining the registration of any document in respect of the suit property.

Thereafter, on dt.09.09.2023 decree holder and judgment debtor entered into a compromise in the National Lok-Adalat and thereby settled the dispute. Accordingly, judgment debtor agreed to pay the amount of Rs.33,00,000/- to the decree holder. Moreover, he also issued eight cheques in favour of decree holder for payment of the said amount. Furthermore, he has also given undertaking that he will not transfer or alienate his 1/3rd share of the suit property till the repayment of the above-said amount. However, judgment debtor entered into agreement with the obstructionist in order to defraud the decree holder and thereafter executed the sale deed to frustrate the execution of the above-said Award passed in National Lok-Adalat. Therefore, objection raised by the obstructionist is not tenable in the eye of law.

05. It is further submitted that in view of afore-said undertaking dt.09.09.2023 given by the judgment debtor in the above-said Award and status-quo order issued by the court, the subsequent sale deed dt.17.10.2023 does not create any right in favour of obstructionist in the suit property. As such, obstructionist is not the bonafide purchaser of the suit property. Therefore, obstructionist has no right to obstruct the present execution proceeding. To fortify his submissions, he relied upon authority of Hon'ble Apex Court in the case of ***Shriram Housing Finance and Investment India Ltd., Vs. Umesh Mishra Memorial Charitable Trust*** reported in ***2022 LiveLaw (SC) 565***.

06. It is further submitted that value of the suit property is of Rs.75,00,000/-. However, it is apparently sold to the

obstructionist for the negligible price of Rs.19,52,000/- with a view to defraud the decree holder. He also pointed out that present application was prepared on dt.03.04.2024. However, it was filed in the present matter on dt.22.06.2024 i.e. at the stage of carrying out sale of the suit property. Therefore, according to him present application is filed with a view to delay and protract the execution of Award. Hence, it is prayed to reject the application.

07. In view of rival contentions of both the parties following points arise for my determination to which I record my findings for the reasons stated thereunder :

<u>POINTS</u>	<u>FINDINGS</u>
1) Does obstructionist <i>prima facie</i> show his right independent from that of the judgment debtor in respect of 1/3rd share of the judgment debtor in the suit property ?	<u>In The Negative</u>
2) Whether bar of Order XXI Rule 102 of the Code of Civil Procedure, 1908 applies to the present application ?	<u>In The Affirmative</u>
3) What order ?	<u>Application Is Rejected With Costs</u>

REASONS

AS TO POINT NOS.1 AND 2 :-

08. It is well settled that agreement for sale does not create any right in the property. Therefore, execution of agreement for sale by the judgment debtor in favour of obstructionist on dt.28.04.2023 i.e. prior to the institution of the suit has not created any right in favour of obstructionist in the suit property.

09. Perusal of Award dt.09.09.2023 passed in Lok-Adalat shows that judgment debtor has created charge upon the suit property for payment of the amount of Rs.33,00,000/-. Therefore, any purchaser of the suit property after the creation of the said charge by the Award of Lok-Adalat shall be bound by the said charge. Therefore, obstructionist, who has purchased the suit property subsequent to the creation of charge upon the suit property for the payment of amount of Rs.33,00,000/- to the decree holder, is bound by the said charge. Therefore, it is clear that transfer of the suit property by the judgment debtor in favour of obstructionist after creating above-said charge does not divest the right of decree holder to recover the amount of Rs.33,00,000/- from the judgment debtor out of his 1/3rd undivided share of the judgment debtor in the suit property.

10. Rule 102 of Order XXI of the Code of Civil Procedure, 1908 provides that nothing in Rule 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which decree was passed or to the dispossession of any such person. In *Silverline Forum Pvt. Ltd., Vs. Rajiv Trust* reported in **(1998)3 SCC 723** Hon'ble Apex Court held that where the resistance is caused or obstruction is offered by a transferee pendente lite, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the

affirmative, the Executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the Executing Court. Similarly, in ***Usha Sinha Vs. Dina Ram*** reported in ***AIR 2008 SC 1997*** Hon'ble Apex Court held that for invoking Rule 102, it is enough for the decree holder to show that the person resisting the possession or offering obstruction is claiming his title to his property after the institution of the suit in which decree was passed and sought to be executed against the judgment debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order XXI of the Code of Civil Procedure, 1908.

11. It is undisputed that 1/3rd undivided share of the judgment debtor in the suit property was the subject matter of the suit bearing Spl. Civil Suit No.106/2023. It is also undisputed that obstructionist is claiming his title to the 1/3rd undivided share of the judgment debtor in the suit property on the basis of sale deed executed after the institution of the suit bearing Spl. Civil Suit No.106/2023 in respect of which Award was passed on dt.09.09.2023 in the National Lok-Adalat and which is sought to be executed against the judgment debtor. As such, bar as envisaged in Rule 102 of Order XXI of the Code of Civil Procedure, 1908 applies to the present application and the objection raised by the obstructionist. Therefore, I hold that the obstructionist, who has purchased the 1/3rd share of the judgment debtor in the suit property after the institution of the suit bearing Spl. Civil Suit No.106/2023 has no independent right to the said 1/3rd share of the judgment debtor in the suit property to resist, obstruct or

object the execution of Award passed in the said suit. Accordingly, I record my finding to point no.1 'in the negative' whereas, 'in the affirmative' to point no.2.

AS TO POINT NO.3 :-

12. In view of my findings to point nos.1 and 2, application is liable to be rejected with costs. Hence, I pass the following order:

ORDER

- 1) Application at Exhibit No.33 is hereby rejected with costs.

Ichalkaranji
Date :- 10. 01. 2025

(Hitendra Urmila Anilkumar Wani)
Civil Judge Senior Division, Ichalkaranji