

Transfer of immovable property by a judgment debtor to a close relative, without consideration, after a decree has been passed and execution proceedings have commenced, is considered a fraudulent transfer intended to defeat or delay the creditor

The **Bombay High Court** in the case of **Sunita Ishwar Samota vs Sanman Trade Impex [Interim Application No. 7784 of 2025]** dated **January 30, 2026**, has held that a transfer of immovable property by a judgment debtor to a close relative, without consideration, after a decree has been passed and execution proceedings have commenced, is considered a fraudulent transfer intended to defeat or delay the creditor. Such a transfer is voidable at the option of the creditor so defeated.

The Court pointed out that when the fraudulent nature of the transaction is patently clear from the timing and circumstances on record, the court can make a determination without the need for a full trial. It emphasised that an executing court, under Order XXI Rule 58 of the CPC, has the jurisdiction to determine whether a transfer of property is fraudulent under Section 53 of the Transfer of Property Act, 1882.

Accordingly, the Court held that the Gift Deed executed by Judgment Debtor in favour of the Applicants, is a fraudulent transfer under Section 53 of the Transfer of Property Act, 1882, made with the intent to defraud the Judgment Creditor. The Court declared the transfer voidable at the option of the Judgment Creditor, sustained the attachment of the flat, and directed the Sheriff of Bombay to proceed with the sale of the property as per the Proclamation of Sale.

The Court acknowledged the legal principle that a company is a separate legal entity and its directors are generally not liable for its debts. However, it observed that in this specific case, the decree was explicitly passed against the directors as well, and the Judgment Debtors had neither defended the suit nor appealed the decree. Therefore, the Bench said that an executing court cannot go behind the decree.

The Court observed that under Order XXI Rule 58 of the CPC, it is empowered to comprehensively adjudicate all questions relating to the right, title, or interest in the attached property. This includes the power to investigate whether a transfer is fraudulent under Section 53 of the Transfer of Property Act, 1882. The Court noted that if a transfer is made with the intent to defeat or delay creditors, it is voidable at the option of the creditor.

Further, the Court noted the suspicious timing of the Gift Deed, that it was executed on 9th March 2020, which was after the decree was passed (30th July 2018) and, crucially, after the execution proceedings were initiated (19th September 2019). The Court considered this a “hollow/related party transaction” that raises serious doubts about the bona fides of the said transaction. It observed that the effect of this transfer to family members was to prevent the property from being reached by the Judgment Creditor, thus defeating or delaying their claim.

Lastly, the Court observed that a full trial was unnecessary. Since the facts regarding the timing of the decree, the execution application, and the subsequent gift were admitted and

clear from the record, the Bench could adjudicate the matter based on the available documents without directing the parties to lead further evidence.