IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Appeal from Order No.81 of 2014
With
Civil Application No.9608 of 2014
And
Civil Revision Application No.144 of 2014

* M/s Ganesh Metal Industries,
Through it Proprietor,
Pankaj Chandrakant Walsekar,
Age 27 years,
Occupation : Business,
R/o E-35, N-1, CIDCO,
Aurangabad. .. **Appellant.**

Versus

* M/s Skyline Automation
Private Limited, a company
incorporated under the Indian
Companies Act, 1956 and
having its work and office
R/s Plot No.E 335, MIDC,
Waluj, Aurangabad,
Through its Directors :

1) Dinesh Vedprasad Goyal,
Age 43 years,
Occupation : Business,
R/o Priyadashini Colony,
Bhokardan Road, Jalna.

2) Mukundram Jugalkishor Mantri,
Age 44 years,
Occupation : Business,
R/o 1260, Kapad Bazar, Jalna.

3) Sunil Vinodrao Raithatha,
Age 56 years,
Occupation : Business,
R/o Balaji Galli, Jalna
Through their G.P.A.
Mrs Saroj s/o Dattaprasad Jaju,
Age 48 years,
Occupation : Housewife & Business
R/o 30, Khinvasara Park,
Garkheda, Aurangabad.

4) Mahanagar Co-operative Bank Ltd.
A cooperative Bank registered
under the Maharashtra Cooperative
Societies Act, having its registered
Office at Hiramani,Super market,
Dr. B.A. Road, Lalbagh, Mumbai.

5) Maharashtra Industrial Development
Corporation, Through its Regional
Manager, Regional Office, MIDC,
Aurangabad Industrial Area,
Near Railway Station, Aurangabad.

6) Lalram Ramji Choudhari,
Age 48 years,
Occupation : Business,
R/o Dube Building, Kamgarnagar,
Pimpri, Pune - 18.

7) Kamalnarayan Dharampal Sharma,
Age 28 years,
Occupation : Business,
R/o "C" Block No.1, Pimpri Colony,
Pimpri, Pune. **.. Respondents.**

Shri. S.D. Kulkarni, Advocate, holding for Shri. S.S. Kulkarni, Advocate, for appellant.

Shri. Anil S. Bajaj, Advocate, for respondent Nos.1 to 3.

Shri. R.L. Kute, Advocate, holding for Shri. V.R. Dhorde, Advocate, for respondent No.4.

Shri. S.S. Dande, Advocate, for respondent No.5.

Respondent No.6 - notice is dispensed with.

Shri. D.K. Thote, Advocate, for respondent No.7.

CORAM: T.V. NALAWADE, J.

DATE : 7th AUGUST 2015

JUDGMENT:

1) Both the proceedings have arisen out of orders made in Special Civil Suit No.165/2009 which is presently pending in the Court of the 6th Joint Civil Judge, Senior Division, Aurangabad. The suit is filed by M/s Skyline Automation Private Limited for declaration that the sale certificate executed by respondent No.4 Bank in favour of the appellant/applicant of the present proceeding is null and void and it is not binding on the plaintiff. Relief of temporary injunction was also claimed in the suit to prevent the present appellant/applicant from transferring the property and from creating third party interest in the property during pendency of the suit. In the suit, present applicant/appellant filed application under Order 7 Rule

11(a) and (d) of the Civil Procedure Code and prayed for rejection of the plaint. The applicant contended that in view of provision of Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (for short “the Act’) Civil Court has no jurisdiction. This application is rejected by the Civil Court by holding that the Civil Court has jurisdiction. The Civil Court has held that there is prima facie case in favour of Skyline Automation Pvt. Ltd. and so relief of temporary injunction is granted. Both the sides are heard.

2) The learned counsel for the applicant/appellant took this Court through various provisions of the Act and also the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The submissions made by both the sides show that, the suit property was taken in possession by creditor bank on 17-11-2003 and during auction under the aforesaid provision of the Act the property was sold to present appellant/applicant. The sale certificate was issued on 22-8-2008 and the suit came to be filed on 25-3-2009.

3) Learned counsel for the appellant/applicant placed reliance on following reported cases : (1) **Mardia Chemicals Ltd. v. Union of India (2004 (2) Mh.L.J. 1090)** (Supreme Court; (2) **Yuth Development Cooperative Bank Ltd. Kolhapur v. Balasaheb Dinkarrao Salokhe (2008 (5) Mh.L.J. 326)** (Bombay High Court); (3) **United Bank of India v. Satyawati Tondon (AIR 2010 SC 3413)**; and, (4) **Jagdish Singh v. Heeralal (2014) 1 SCC 479.**

4) On the other hand learned counsel for the original plaintiff took this Court through some observations made by the Division Bench of this Court in a case reported as **Uco Bank Mumbai v. M/s Kanji Manji Kothari (2008(4) Mh.L.J. 424)**. In this case this Court has considered and interpreted the ratio laid down by the Hon'ble Apex Court in Mardia Chemical's case cited supra. Learned counsel for the plaintiff submitted that as the sale certificate is issued in favour of the appellant the Tribunal created under the Act has no jurisdiction and only the Civil Court can have jurisdiction. He referred to some observations made by the Division Bench of this Court in Uco Bank's case in that regard.

5) In the case of Uco bank (cited supra) there are some observations as contended by the learned counsel for the plaintiff but in subsequent decision like the case of **Jagdish Singh** cited supra, the position is made clear. Relevant observations which made the position clear are at paragraphs 20 and 24. They are as under :--

> ***"20***. *Therefore, the expression "any person" referred to in Section 17 would take in the plaintiffs in the suit as well. Therefore, irrespective of the question whether the civil suit is maintainable or not, under the Securitisation Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the Securitisation Act, in case the Bank (secured creditor) adopt any measure including the sale of the secured assets, on which the plaintiffs claim interest.*
>
> ***24.*** *Statutory interest is being created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures provided by the statute is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "in respect of any matter" which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under sub-section (4) of*

> *Section 13 of the Securitisation Act. Consequently, if any aggrieved person has got any grievance against any "measures" taken by the borrower under sub-section (4) of Section 13, the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under sub-section (4) of Section 13 of the Securitisation Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. further, Section 35 says, the Securitisation Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well.*"

6) The observations show the even after issuance of the sale certificate proceeding can be filed in DRT.

7) On the aforesaid point the learned counsel for the creditor bank placed reliance on the case reported as **Authorized Officer, Indian Overseas Bank v. Ashok Saw Mill AIR (2009 SC 2420)**. The ratio of that case shows that it is made clear that any person like the present plaintiff can approach DRT. Considering the interpretation made by the Division Bench of this Court in the case of Uco Bank cited supra, the Civil Court has held that the said suit is tenable in Civil Court. As the position is made abundantly clear in aforesaid cases and particularly the subsequently decided cases by the Apex Court, this Court

holds that the Civil Court has no jurisdiction to entertain the dispute of the present nature and the plaint needs to be rejected. As the suit is not tenable in Civil Court there is no question giving any relief like temporary injunction in favour of the plaintiff.

8) In the result, both the proceedings are allowed. The order dated 25-7-2014 made on application Exhibit 5 in Special Civil Suit No.165/2009 thereby granting temporary injunction is hereby quashed and set aside. Appeal from Order No.81 of 2014 is allowed in aforesaid terms. No order as to costs. Civil Application No.9608 of 2014 stands disposed of.

9) The order dated 25-7-2014 made on Exhibit 15 in Special Civil Suit No.165/1999 is hereby quashed and set aside. The application filed for rejection of the plaint is allowed. The plaint stands rejected. Civil Revision Application No.144 of 2014 is allowed in aforesaid terms. No order as to cost. Interim relief stands vacated.

Sd/-
(T.V. NALAWADE, J.)

rsl