IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7398 OF 2013

Sardar Surjitsingh s/o Jeevansingh Girniwale,
Age : 54 years, Occu. Agril.,
R/o Gurudwara ate No.3, Nanded ..PETITIONER

VERSUS

1. Kacharabai @ Geetabai w/o Rahu Gachhe,
Age : 87 years, Occu. Nil,
R/o Pimpalgaon Pund, at present
Prabhat Nagar, Nanded ..Decree Holder

2. Gyanu @ Gyanoba s/o Namya Suryawanshi,
Age : 64 years, Occu. Agril.,
R/o village Dabad, Tq. Ardhapur,
Dist. Nanded ..Judgment debtor

3. Ashok s/o Namya Suryawanshi,
Age : 59 years, Occu. Aril. & service,
R/o Dabad, Tq. Ardhapur,
Dist. Nanded, at present Rest House
Near residence of Dist. Collector,
Srinagar, Nanded ..Judgment debtor

4. Ananda s/o Namya Surywanshi,
Age : 49 years, Occu.Agril.,
R/o village Dabad, Tq. Ardhapur,
Dist. Nanded ..Judgment debtor

..RESPONDENTS

Mr Amit A. Mukhedkar, Advocate for petitioner;
Mrs C.S. Deshmukh, Advocate holding for Mr P.P. Dawalkar, Advocate for respondent no.1

**CORAM : N.W. SAMBRE, J.**

**DATE : 27th April, 2015**

**ORAL ORDER :**

The petitioner, subsequent purchaser of the property, has questioned the legality and validity of the order dated 2nd January, 2012, passed by Civil Judge Senior Division, Nanded, below Exh.29, in Misc. RJE. A. No.155 of 2011.

2. The petitioner is an objector who claims to have stepped into the shoes of judgment debtor in Special Civil Suit No.106 of 2000, which was filed with a prayer for recovery of damages from judgment debtor for remaining in unlawful possession of the property, for preceding three years of passing of decree in question.

3. The suit came to be compromised on 4th August, 2003, between the plaintiff and defendants, wherein it was agreed that the plaintiff shall receive Rs.1,10,000/- from defendants no.1 to 3 and each of the defendants hall pay an amount of Rs.36,666/- within eight months from 4th August, 2003, i.e. the date of compromise. It was also agreed that in case if the party fails to pay the amount, the same shall carry interest at the rate as is applicable in the Nationalized Bank and the amount will be required to be repaid with interest. It is further provided in the said compromise that

till the payment by the judgment debtors to the decree holder, half of the suit property will not be sold.

4. Subsequent thereto, since the judgment debtor did not honour the terms, the present respondent no.1 filed the execution proceedings being Special Darkhast No. 22 of 2004. In the said proceedings, except the petitioner, other two judgment debtors paid the amount and as such the decree holder filed satisfaction purshis on 8th November, 2010 against two judgment debtors.

5. The petitioner purchased property in question by registered sale deed dated 9th July, 2010. It is the claim of the present petitioner that he is ready and willing to honour the decree passed in favour of the decree holder and against the judgment debtors from whom he has purchased the property in question. So as to show bona fides, the petitioner has deposited an amount of Rs.1,00,000/- in this Court to show his *bona fides*.

6. According to the petitioner, in view of the provisions of Order XXI, Rule 1 of he Code of Civil Procedure, even if the petitioner is not a party to the decree, he being a person having interest in the property by virtue of sale deed, referred supra, he can satisfy the decree. According to him, in view thereof and the law declared by this Court, in the matter of **Lalit Malick & ors. vs. Baijinder Singh & ors.**, reported in **2011 (4) Bom. C.R.**

**310**, the learned Executing Court should have appreciated the said fact and should have permitted the present petitioner to satisfy the decree.

7. While countering the above referred submissions, learned Counsel appearing on behalf of the decree holder objects the submissions of the petitioner on the ground that the judgment in the case of Lalit Malick & ors. (cited supra) has no application to the facts of the present case, as according to him, in the said case the title was not transferred. He would further urge that he has every right to execute the decree by attaching the property as the property was transferred contrary to the terms of compromise decree. According to him, the order passed by the Trial Court is just and proper and thus prayed for dismissal of the petition.

8. From the record of the present case, it appears that the compromise decree as is arrived at between the parties, is not in dispute. After the compromise was arrived at, in the execution proceedings assistance of the Court for execution was sought by seeking attachment of the immovable property and auction of the same.

9. The fact remains that in the compromise decree what was agreed was that the decree holder will be entitled to interest at the rate, which is leviable by the Nationalized Bank. In view thereof, in my opinion, the law laid down by this Court, in the matter of Lalit Malick & ors. (cited supra), is

required to be taken note of. In the background of provisions of Order XXI, Rule 1 of the Code of Civil Procedure, this Court, in paragraphs 25 and 28 of the said judgment, has observed thus :-

*“25. That leaves us to the last question as to whether the petitioners are entitled to make the payment and satisfy the decree. For considering the rival submissions it would be necessary to refer to Rule 1 of Order 21 and Rule 55 thereof.*
*"Order XXI, Rule 1*

*1. Modes of paying money under decree- (1) All money, payable under a decree shall be paid as follows, namely:*

*(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or*

*(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or*

*(c) otherwise, as the Court which made the decree, directs.*

*(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.*

*(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state of following particulars, namely:-*

*(a) the number of the original suit;*

*(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;*

*(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;*

*(d) the number of the execution case of the Court, where such case is pending; and*

*(e) the name and address of the payer.*

*(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).*

*(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:*

*Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be."*

*Perusal of clauses (a) and (b) of sub-rule 1(1) would reveal that it does not mention as to who would be entitled to make the payment.*

*28. It can thus clearly be seen that the Privy Council in the aforesaid case has held that since the mortgagee for an absolute protection of his own property made the payment, the condition as stipulated in the conditional decree stood satisfied. If a mortgagee for protection of the interest is entitled to make a payment towards the satisfaction of a decree, by same analogy a person who is interested in property and in possession thereof, in my view would be entitled to make the payment for satisfaction of the decree for protection of his right in the property concerned."*

10. Once this Court has formed an opinion that the said provisions even if are pertaining to the applicability to a case of mortgage, the same analogy can also be made applicable to a person who is interested in the property and possession thereof by virtue of sale deed in his favour by judgment debtor.

11. Admittedly, the present petitioner is in possession of the property in question by virtue of the sale deed referred supra. As such, in my opinion, the order impugned herein is not sustainable and thus stands set aside.

12. The amount of Rs.1,00,000/- deposited in this Court is ordered to be transferred forthwith to the Court of Civil Judge Senior Division,

Nanded in Misc. RJE.A. No.155 of 2011.

13. The petitioner herein undertakes to deposit the additional amount as shall be worked out by the Executing Court to satisfy the decree in question, if the claim is not satisfied within the amount deposited, i.e. Rs.1,00,000/-. Upon furnishing such undertaking before this Court within a period of two weeks from today, the amount be remitted back to the above referred Court, which is directed to satisfy the claim brought before it through the execution proceedings, being Special Darkhast No.22 of 2004.

14. Writ Petition stands allowed in above terms with no order as to costs.

**(N.W. SAMBRE, J.)**

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