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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4432 OF 2006

Shri Damji Kanji Shah .. Petitioner

Vs.

Narendra Amrutlal Pandya and others .. Respondents

Mr.Dnyaneshwar Deshmukh, Advocate for the Petitioner.

Mr.Rajesh Datar, Advocate for the Respondent No.1.

CORAM : R. G. KETKAR, J.

DATE : 15th JUNE, 2015

P.C. :

. Heard Mr.Dnyaneshwar Deshmukh, learned Counsel for the petitioner and Mr.Rajesh Datar, learned Counsel for the respondent No.1 at length.

2. By this petition under Article 227 of the Constitution of India, original defendant No.3 has challenged the order dated 06/06/2006 passed by the learned Civil Judge, Senior Division, Kalyan below Exhibit 67 in Special Civil Suit No. 181 of 2003. By that order, the learned trial Judge allowed the application made by respondent No.1-original plaintiff and directed respondent No.2/defendant No.1 Dombivali Nagri Sahakari Bank Ltd., (for short 'Bank') to accept all the dues of loan disbursed to respondent No.3/original defendant No.2 and release the suit flat to the plaintiff and report the compliance to the Court. The parties shall hereinafter be

referred to as per their status before the trial Court.

3. In support of this petition, Mr.Deshmukh strenuously contended that respondent No.3–defendant No.2- M/s.Vikas Ploy and Glass had obtained loan from defendant No.1 – Bank. Defendants No.3 & 4 are the sureties to the loan obtained by defendant No.1. He submitted that the plaintiff came with the case that he had purchased the suit shop from defendant No.2 by registered agreement of sale. After the transaction, the plaintiff came to know about dues of defendant No.1 Defendants No. 3 & 4 are the guarantors to the loan. The plaintiff, therefore, filed application setting out therein that he is ready to pay the dues of defendant No.1- Bank. By the impugned order, the learned trial Judge allowed the application and directed defendant No.1 to accept all the dues of loan disbursed to defendant No.3 and release the suit shop to the plaintiff and report the compliance to the Court.

4. Aggrieved by that decision, defendant No.3 has instituted the above petition. By order dated 13/07/2006, this Court admitted the petition by issuing rule and declined interim relief. It was made clear that rights of the respective parties in respect of the suit shop will be subject to the decision of this petition. Mr.Deshmukh submitted that the learned trial Judge ought not to have allowed the application. It is not possible to accept his submission as it is not disputed that defendant No.2 had obtained

loan from defendant No.1 and defendants No. 3 & 4 are sureties to the loan obtained by defendant No.2. When the plaintiff took out application at Exhibit 67, defendant No.3 did not come with the case that being a surety, he is ready and willing to clear the dues of defendant No.1 – Bank. That apart, as noted earlier, while issuing rule, this Court has declined the interim order. Mr.Deshmukh fairly pointed out affidavit filed by plaintiff and in particular, paragraph 2 wherein plaintiff specifically asserted that possession of the suit shop is handed over by defendant No.1-Bank on 06/07/2006. I, therefore, find no good reason to interfere with the impugned order.

5. In view thereof, as the impugned order is already executed and implemented, I do not find any good reason to interfere with the impugned order. For the reasons stated earlier, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, petition fails. Rule is discharged in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)