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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 8650 OF 2013

Shri Shankar Govind Mali and ors. Petitioners

vs

Kolhapur District Central Cooperative Bank
Limited and ors. Respondents

Mr. Prashant S. Bhavake for the Petitioners

Mr. Shrikrishna R. Ganbavle for the Respondent No.1.

Mr. Anand S. Patil for Respondent No.7.

CORAM: ANOOP V. MOHTA, J.

DATE : February 04, 2015

ORAL JUDGMENT :

Heard finally by consent of parties.

2 The Petitioners have challenged the order passed by the Court below whereby restrained the Petitioners (opponent Nos, 3, 4 and 7) in the following terms :

“1) The application dated 21.04.2010 at Exh. 32 is partly allowed.

2) The opponent Nos. 3, 4, 6, 7 and 9 are hereby temporarily restrained from transferring, selling, alienating, creating any encumbrance and from disposing of their respective shares in the properties

mentioned in schedule “A” and “B” of the application till the final decision of the dispute.

3) Costs shall be the cost in main cause.”

3 The Appellate Authority by reasoned order also dismissed the Appeal filed by the Petitioners that resulted into maintaining the order so referred above.

4 Admittedly, the dispute filed by Respondent No.1-Bank is still pending for recovery of the amount of Rs.1,77,13,112/-. However, as averred and considered by the court below, and further, as sufficient material placed on record and as sufficient case is made out and the balance of convenience lies in favour of the disputant-Bank and further the Bank would suffer irreparable loss and, therefore, passed the order of restraintment as referred above.

5 The learned counsel appearing on behalf of the Petitioners have relied upon a Division Bench judgment of this Court in *Swan Mills Limited v. Dhirajlal @ Dhirubhai Babaria and ors.*, 2012 (4) Mh. L. J. 937 [*Anoop V. Mohta, J.* - part of the Division Bench] which deals with the aspect of Order 38, Rule 5 read with Order 39, Rule 1

of Code of Civil Procedure (CPC) and in the facts of that case, it is observed that “once finding is recorded that Plaintiffs have not made out a case for attachment before judgment, temporary injunction cannot be granted against defendants.”. Therefore, submitted that no question of granting the order of injunction as the facts and circumstances are also similar.

6 The learned counsel for Respondent No.1-Bank, however, submitted that the Division Bench judgment needs to be seen and considered on the basis of the respective facts so mentioned and referred. In that case, the issue was based upon a foreign judgment which was taken to be a decree of this Court for the purposes of enforcement and execution and, therefore, proceedings were initiated. The learned Single Judge granted prayer (a) and thereby restrained the concerned authorities from selling and/or alienating and/or encumbering and/or creating third party rights of any nature whatsoever in respect of the immovable and movable assets/properties of the defendants wherever, be located in India and overseas. The Division Bench judgment, therefore, in the background also observed that there is no case or finding given by the learned Single Judge about the balance of convenience, prima facie case

and/or irreparable injury and loss which are relevant and necessary before passing the injunction order. In the present matter, I have to consider the facts of the present case and the law so involved. General observations, if any, made that cannot be read in isolation to accept the submission made by the learned counsel for the Petitioners that no injunction order can be passed, if no case is made out for attachment before judgment specifically when Section 95 of the Maharashtra Cooperative Societies Act (MCS Act) which is a special code, deal with and provides with the provisions connected with and/or related to the attachment before award and/or interlocutory order. Section 95(4) of the Act is reproduced below :

“95 Attachment before award or order and
interlocutory orders. - (1) ---

(2) -----

(3) -----

(4) The Co-operative Court, the Registrar or the
authorised person, as the case may be, may in order to
prevent the ends of justice being defeated make such
interlocutory orders pending the decision in a dispute
referred to in sub-section (1) as may appear to be just
and convenient.”

7 Admittedly, the dispute/claim of the Bank is pending. Section 95 so read and referred along with other sections and the provisions just cannot be overlooked while considering the case for grant of interlocutory orders including injunction pending the main dispute. There is no other provision available under the MCS Act for passing and/or grant of interlocutory order by a court pending the dispute if case is made out that the opponent/defendants to defeat and/or would obstruct the execution and about to dispose of the whole or any part of his property or about to remove the whole or any part of his property from the jurisdiction of the Court, the Registrar or the concerned office. The power is also provided to insist for adequate security apart from conditional attachment of the property. Section 95(4) further empowers the Cooperative Court, the Registrar or the authorised person, as the case may be, may, in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute referred which they appear to be just and convenient.

8 This specific provision, in my view, though, in a given case, need to read and refer along with the principle of Order 39, Rule 1 of

CPC, yet the power of Cooperative Court to grant such injunction and/or interlocutory order just cannot be restricted as submitted by the learned counsel appearing for the Petitioners based upon the Division Bench judgment in Swan Mills Limited (*supra*).

9 It is settled that the Court needs to consider the facts and circumstances of each case. The facts are dis-similar so also the provisions so read and involved in the present writ petition. The statute provides specific provisions and permit the party to get such interlocutory orders pending the award and/or dispute. There is no remedy available for such protective reliefs. The invocation of present provisions by the Bank and the reasoned decision given by the Authorities cannot be stated to be illegal, contrary to any provision and/or even to the judgment so referred above by the learned counsel appearing for the Petitioner [Swan Mills Ltd. (*supra*)]. Both the authorities are within the power and jurisdiction to pass such interlocutory orders even of injunction as passed in the present case to avoid further complication and to defeat and/or delay and/or obstruct the execution of any award by recording clear finding that *prima facie* case is made out and the balance of convenience and equity lies in favour of the Bank and so also the aspect of an irreparable injury. The

orders so passed concurrently by both the authorities appears to be just and convenient.

10 Therefore, taking overall view of the matter and as there is no perversity on the merits of the case so recorded. No case is made out to interfere with the impugned orders. The writ petition is dismissed. No costs.

(ANOOP V. MOHTA, J.)