

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St.NO.33925 OF 2014
WITH
CIVIL APPLICATION ST. NO.1175 OF 2015**

Shekhar Samel & Ors.

..Petitioners

Vs.

Abhudaya Co-op Bank Ltd. & ors.

..Respondents

Mr. S.S.Panchpor i/b SNP Legal for the Petitioners

Mr. Madhur Rai i/b PRS Legal for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 19th JANUARY, 2015

P.C.

1 At the outset, the Learned Counsel for the Petitioners seeks leave to amend so as to annex the impugned order along with the application Exhibit 30 filed by the Petitioner and the reply of the Respondent bank Exhibit 34. Leave granted. Amendment to be carried out in the course of the week.

2 The Writ Jurisdiction of this Court is invoked against the order dated 20-12-2014 passed by the Learned Ad-hoc District Judge-3, Pune, by which order, the application filed by the Petitioner for stay of the further proceedings in respect of the auction came to be rejected.

3 The Suit in question being Regular Civil Suit No.1481 of 2008 has been filed by the Petitioners herein for declaration that the Deed of Mortgage /

Agreement of Mortgage (By Deposit of Title Deeds) dated 24-5-1997 executed by the Defendant Nos.3 and 4 in favour of the erstwhile Citizens Co-operative Bank Ltd now merged into Abhudaya Co-operative Bank Ltd., is illegal, null and void as against the Plaintiffs and their suit flats and shop and the same is not binding on the Plaintiffs. A further declaration is sought that the Defendant Nos.3 and 4 had no right to mortgage the suit flats and shop of the Plaintiffs to the erstwhile Citizens Co-operative Bank Ltd., and that the erstwhile Citizens Co-operative Bank Ltd had no right to take the suit flats and shop of the Plaintiffs as a security for the loan advanced to Defendant No.3 in view of the specific restrictive covenant in the power of attorney executed by the Plaintiffs.

3 Having regard to the nature of the relief sought in the Suit, the Defendant Bank which is a Multi State Co-operative Bank is governed by provisions of Multistate Co-operative Societies Act, 2002, raised the issue of jurisdiction of the Civil Court to entertain the Suit and consequentially prayed for dismissal of the Suit under Order VII Rule 11(d) of the Civil Procedure Code. The said application filed by the Respondent Bank came to be allowed and resultantly the objection of the Respondent Bank to the maintainability of the Suit came to be upheld and the Suit came to be dismissed.

4 The said order dated 1-4-2010 came to be challenged by way of an Appeal being Regular Civil Appeal No.4566 of 2010 by the Petitioner. It is in

the said Appeal that the instant application for stay came to be filed which as indicated above has been rejected by the Lower Appellate Court by the impugned order. In so far as the auction notice is concerned, a perusal of the same shows that the auction is put of the property situated on the fourth floor, Flat No.B-407 and flat No.C-9, situated on the ground floor and also the shop No.6 on the ground floor, which belongs to the Defendant No.3.

5 The Learned Counsel for the Petitioners Mr. Panchpor fairly stated that in the present Petition, the Petitioners are not concerned with the said Flat No.B-407 and Flat No.C-9, but are concerned with the Shop No.6. The Petitioners accordingly in the Appeal filed by them, filed the instant application for stay of the further proceedings in the auction. Pending the Appeal, the Lower Appellate Court, having regard to the fact that the Petitioners are not concerned with the flats in question and in so far as Shop No.6 is concerned, the Petitioners have not substantially established that the said shop was agreed to be given to them by the developers, held that no relief could be granted in so far as the stay application is concerned.

6 It is required to be noted that in the order passed by the Special Recovery Officer, of the Respondent No.1, he has observed that the Petitioners had never taken objection to the mortgage of the entire property which was under development, being created in favour of the Respondent Bank and it is

at the stage of the auction after the developer had defaulted in the payment made to the bank that the contention which are now sought to be raised as regards restricted covenant etc., are sought to be raised.

7 In my view, having regard to the facts as afore stated, the order passed by the Lower Appellate Court rejecting the application cannot be faulted with. The impugned order does not suffer from any illegality or infirmity for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

8 In view of the dismissal of the above Writ Petition, the Civil Application St.No.1175 of 2015 does not survive and to stand disposed of as such.

[R.M.SAVANT, J]