IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3136 OF 2013

WRIT PETITION NO.896 OF 2009

The KAPOL Co-operative Bank Ltd.).. Applicant

V/s

Dhanesh Narbheram Bhansali and ors.).. Respondents.

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R.M. Haridas, applicant/original respondent No.1.
Kishor Jain a/w Divya Jain i/b Divya Darshit Jain & Associates, original petitioner.
S.D. Rayrikar-AGP, for respondent No.8.

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CORAM : M.S. SONAK, J.
DATE : JANUARY 12, 2015

P.C.

1. In this petition, the petitioner has obtained the stay as against the execution of recovery certificate. As a result, the respondent-bank is unable to proceed against the properties of the petitioner.

2. By this Civil Application, the respondent-Bank merely seeks an order that the petitioner by taking advantage of the stay order granted by this Court, does not dispose of its properties or create any third party rights therein. The Civil Application is opposed by the petitioner, primarily urging that in the present case no notice was served upon the petitioner prior to issuing

of the recovery certificate and further, the respondent-Bank in the present case has taken no serious steps to recover the dues from the principal borrower. The Learned Counsel for the petitioner pointed out various instances and urged that respondent-Bank has not at all be serious in recovering the dues by way of sale of the properties of the principal borrower. In these circumstances, the Learned Counsel submitted that equity of the matter would require that no restraint is imposed upon the petitioner in the matter of disposal of the properties.

3. Having heard the Learned Counsel for the petitioner, in my judgment, the submission made by the Learned Counsel can be properly dealt with at the stage of final hearing of the petition. At present stage, however, if the petitioner has obtained any interim relief from this Court which has the effect of restraining the respondent-bank from either attaching or selling the petitioner's properties, then during pendency of such interim relief, it would not be proper to permit the petitioner to sell the property in question or to create any third party rights therein. If finally, this Court comes to the conclusion that the petition lacks merits, then in the meanwhile, if no restraint is imposed upon the petitioner, there will have no property available for the respondent-Bank to proceed against.

4. In the aforesaid circumstances, it is only proper that pending

the final hearing and disposal of this petition as a condition of continuance of the interim relief already granted in favour of the petitioner, the petitioner is restrained from selling, transferring, alienating or creating any third party rights in the suit property which has been referred to in the Civil Application. With aforesaid, the Civil Application is disposed of.

5. Considering the petitioner's submission, it would be proper, if the petition is added to “Final Hearing” Board. Place the petition under the caption of “Final Hearing” on 02 February, 2015.

(M.S. SONAK, J.)