IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Second Appeal No.380 of 2015

Rajendra Narayan Kenghe. .. **Appellant.**

Versus

HDFC, Housing Development
Finance Corporation Ltd.
And Others. .. **Respondents.**

Shri. Pawankumar S. Agrawal, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 5th APRIL 2016

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.369/2009 which was pending in the Court of the Civil Judge Senior Division Ahmednagar and also against the judgment and decree of First Appeal No.325/2011 which was pending in the Court of the Ad-hoc District Judge-4, Ahmednagar. Heard learned counsel for the appellant.

2) The suit was filed by the present appellant against HDFC and others like Balasaheb Ghodake, defendant No.2, for relief of perpetual injunction and declaration. Flat No.101 from Balaji Chambers, Savedi was sold by the developer Hanuman Construction to Balasaheb Ghodake. Said Balasaheb had taken loan for purchasing the flat from HDFC Bank and this flat was mortgaged with HDFC.

3) It is the case of the plaintiff that the transaction made by Hanuman Construction with Balasaheb Ghodake was cancelled on 28-2-2001 and the document in that regard was registered. It is contended that after making inquiry about the title, the plaintiff purchased the flat from Hanuman Construction and for that loan was taken from defendant No.3 Punjab National Bank.

4) It is the case of the plaintiff that on 5-7-2009 when defendant No.1 HDFC issued notice to defendant No.2 and asked to deposit the amount of Rs.3.11 lakh and informed that action will be taken under the provision of the Securitisation and reconstruction of Financial Assets

and Enforcement of Security Interest Act 2002 (for short “the Act”) plaintiff realized that he was deceived. He prayed for relief of declaration that notice given to the defendant No.2 by defendant No.1 is not binding on the plaintiff and he prayed for relief of injunction to protect his possession.

5) Defendant No.1 filed written statement and contested the matter. It took defence that Civil Court has no jurisdiction in view of the provision of the Act and right is given to the creditor under the Act. It also contended that when the property was mortgaged with HDFC and that was within knowledge of Hanuman Construction, it was not open to the Hanuman Construction to sell the flat to the plaintiff and no rights are transferred to the plaintiff due to that transaction.

6) Defendant No.2 also filed written statement and admitted that initially there was transaction between him and Hanuman Construction. He contended that the transaction between him and Hanuman Construction was cancelled as more amount was demanded than the agreed

amount by the Hanuman Construction. It is contended that Hanuman Construction had agreed to pay the loan taken in respect of this flat and Hanuman Construction has deceived him by not making payment of the loan amount.

7) On the basis of aforesaid pleadings issue of jurisdiction was framed and issue of entitlement of aforesaid relief was also framed.

8) Both the Courts below have placed reliance on a case reported as **2009(1) Bom. C.R. 444 (Youth Development Co-operative Bank Ltd. v. Balasaheb Salokhe).** On the basis of the provisions of the Act and the observations made in the reported case by this Court, the Courts below have held that Civil Court has no jurisdiction.

9) It was submitted by the learned counsel for the appellant that the appellant was deceived as there was virtually no record on the basis of which the appellant could have suspected of the existence of transaction of

loan between Balasaheb and HDFC. This contention is not acceptable as the pleadings of the defendant No.2, previous purchaser show that he had taken loan and the promise was given by Hanuman Construction to him to repay the loan. Thus Hanuman Construction could not have sold the property to the plaintiff before making payment of loan taken from HDFC.

10) Learned counsel for the appellant submitted that the trial Court could have rejected the plaint by holding that it had no jurisdiction but it went on in deciding the other issues like entitlement to get the relief of injunction etc. and to that extent decision needs to be set aside. This Court is not expected to consider such circumstances in the second appeal. It needs to be kept in mind that Civil Court had no jurisdiction to entertain the said suit. Plaintiff had taken the risk in approaching the Civil Court and it can be said that from the year 2009 till today the plaintiff has protracted the things by using civil litigation. It was submitted that order can be made to allow the plaintiff to withdraw the suit with liberty to file appropriate proceeding before the forum created under

the Act. This submission is not acceptable and after so many years. Considering the rights given to the creditors under the Act, this Court holds that no more complications can be allowed. In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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