

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO. 225 OF 2013
IN WRIT PETITION NO. 6352 OF 2012
WITH CONTEMPT PETITION NO. 224 OF 2013
IN WRIT PETITION NO. 6357 OF 2012

THE BALASAHEB SATBHAI MERCHANTS CO-OPERATIVE BANK LTD.
VERSUS
M/S MODERN PIPES AND ALLIED PRODUCTS AND OTHERS

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Advocate for Petitioners : Shri Bhavar Nitin R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 11, 2016

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PER COURT :-

1. The petitioner is aggrieved by the dis-obedience of a direction issued by this Court vide its order dated 27.9.2012 in Writ Petition No.6352 of 2012, by the respondents.

2. Grievance is that despite the direction in paragraph No.6 of the above said order, by which the judgment debtors - respondents 1 to 3, were directed not to create third party interest or alienate the suit property, they have proceeded to alienate the said suit property by entering into a sale deed, which is dated 9.11.2012. It is, therefore, submitted that the said act of the judgment debtors amounts to willful disobedience of the order passed by this Court.

3. I have considered the submissions of the learned Advocate for the

petitioner.

4. The directions issued by this Court are set out in the order dated 27.9.2012. This Court has observed in paragraph Nos.4 to 6 of the order, as under:-

“4. The Court would be required to decide the application seeking injunction restraining the Judgment debtor and the parties therein expeditiously.

5. In light of the above, the executing Court shall decide the application under Order XXI Rule 54 of the C.P.C., so also an application seeking restraint against the respondents from alienating or creating third party interest expeditiously.

6. It is submitted that the next date fixed in the execution proceedings is 11/10/2012. The parties shall appear before the Court on the said date and the executing Court shall endeavour to decide the same expeditiously. The respondent nos. 1 to 3, who are also the Judgment debtors shall not alienate, create third party interest in respect of the suit property as the property is also subject matter of the execution and any sale hereinafter by any party shall suffer the consequences.”

5. It is, therefore, apparent that the application for seeking injunction, so as to restrain the judgment debtors from alienating the property, was pending in the execution proceedings. Similarly, an application under Order XXI Rule 54 of the CPC for attachment of

property and for adding parties was also pending before the said Court. This Court has, therefore, observed that the executing Court will have to decide the application for addition of parties as well as for restraining the judgment debtors from alienating the property or creating third party interest.

6. It is stated by the petitioner that the application under Order XXI Rule 54 of the CPC has been rejected. Same was challenged before this Court in Writ Petition Nos. 2267 and 2268 of 2013. By order dated 7.5.2013, passed by this Court, both these petitions are disposed off by observing that the orders restraining the respondent from creating third party interest, issued by this Court, shall continue till the decision of the application under Order XXI Rule 54 of the CPC.

7. The observations of this Court in paragraph Nos.3, 5, 6, 7, 8, 9, 10 and 11, in its order dated 7.5.2013, read as under:-

“3 The application filed under Order XXI, Rule 54 of the Code of Civil Procedure is rejected so also, the application for addition of party.

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5 While deciding an application under Order XXI, Rule 54 of the Code of Civil Procedure and more particularly when objection is raised for the same, the Court is required to also decide about the right, title and interest. In the present matter,

the right, title and interest of the parties has not been decided. It is the contention of the decree holder that the transfer is a fraudulent transfer within the meaning of the Transfer of Properties Act. Whether the transfer is fraudulent or not will have to be considered by the Executing Court while deciding the application under Order XXI, Rule 54 of the Code of Civil Procedure. While not deciding the same, the Court has failed to exercise the jurisdiction vested in it.

6 *Mr. Kulkarni, learned counsel submits that the transferees herein have also further executed conveyance in favour of third parties.*

7 *Be that as it may, this Court had passed prohibitory order on 27th September, 2012. If any transaction is made in transgression of the said prohibitory orders, the same would be void abinitio.*

8 *The impugned order passed by the Court below Exhibit - 10 in Special Darkhast No.68 of 2011 and below Exhibit - 22 in Special Darkhast No.69 of 2011 cannot be sustained and the same are quashed and set aside. As far as the order below application for addition of parties is concerned, the same would depend upon the order passed on an application for attachment of property.*

9 *The trial Court shall decide the application Exhibit - 10 in Special Darkhast No.68 of 2011 and Exhibit - 22 in Special Darkhast No.69 of 2011 afresh by giving opportunity of hearing to the parties concerned. The parties shall appear before the Executing Court on 18th June, 2013.*

10 The impugned orders passed by this Court restraining the Respondents from alienating / creating third party interests shall continue till the decision of an application under Order XXI, Rule 54 of the Code of Civil Procedure.

11 The trial Court shall also issue notice to the persons to whom the transferees have further transferred the property.”

8. Respondent Nos.1 to 3 have filed their affidavits in reply. They have tendered an unconditional apology and have stated that they have not intentionally or deliberately or willfully disobeyed the order passed by this Court. It is further stated that the document dated 9.11.2012 placed on record would clearly indicate in paragraph No.9 onwards that all the parties, who have agreed to purchase the suit property, have been made aware of the pendency of the execution proceedings and the pending litigation. After making them aware of the consequences, rights have been created.

9. It is further submitted that the respondents herein have referred to the orders passed by this Court in the said document dated 9.11.2012 and by making the other parties aware of the orders passed and the pending litigation, it would indicate that the respondents have not surreptitiously created further rights.

10. I find that this Court by its order dated 7.5.2013, has observed in paragraph No.7 that if any transgression of its prohibitory order dated

27.9.2012 has occurred, such transaction post the prohibitory order would be void *ab initio*. In my view, this would sufficiently safeguard the interest of the petitioner. This Court has further extended its prohibitory order till the application under Order XXI Rule 54 of the CPC is decided, in paragraph No.10 of its order dated 7.5.2013.

11. In the light of the above, I do not find that these petitions deserve to be entertained. The same are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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