

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION (ST.) NO.9232 OF 2016

IN

WRIT PETITION NO.1080 OF 2016

Concorde Buildcon Pvt. Ltd.	... Applicant / (Intervener)
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IN THE MATTER BETWEEN

Baburao Marotirao Sakpal	... Petitioner
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V/s.

The Sahebrao Deshmukh Co-op. Bank Ltd and ors.	... Respondents
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WITH

CIVIL APPLICATION (ST.) NO.9234 OF 2016

IN

WRIT PETITION NO.11679 OF 2014

Concorde Buildcon Pvt. Ltd.	... Applicant / (Intervener)
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IN THE MATTER BETWEEN

M/s. Mountain Villas	... Petitioner
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V/s.

Deputy Registrar, Co-operative Societies, Mumbai and ors.	... Respondents
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Mr. Samir A. Vaidya for the Intervener / Applicant in both Civil Applications.

Mr. Vishal C. Ghosalkar for respondent no.1 in both Civil Applications.

Ms. Gouri Rao, Asstt. Govt. Pleader for respondent no.4 in CA (st.) no.9232 of 2016 and for respondent no.1 & 7 in CA (st.) no.9234 of 2016.

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CORAM : M. S. SONAK, J.

DATE : 11 APRIL 2016.

P.C.:

1. These Civil Applications seeking recall of common order dated 05 February 2016, in the aforesaid two petitions, are quite misconceived and therefore, dismissed. The reasons for such dismissal are as follows.

2. Firstly, the applicant was not a party to the two writ petitions, in which the challenge was mainly to the recovery certificate and the auction notice. Since the applicant claims to have purchased the suit property from the petitioners in the two petitions and a conveyance, very categorically makes reference to the suit property being mortgaged, it is quite inconceivable that the applicant herein was unaware of the present proceedings.

3. Secondly, the two petitions came to be dismissed, *inter alia*, on the ground that the conduct of the two petitioners, through whom the applicant herein, now claims, was such, as would dis-entitle them to any equitable reliefs under Articles 226 and 227 of the Constitution of India. The two petitioners had practised fraud upon the Courts and authorities by even going to the extent of obtaining consent decree from the Civil Court in the matter of disposal of suit property which had been mortgaged to the respondent-bank.

4. On the basis of such consent decree, the two petitioners executed a registered Sale Deed dated 19 April 2014 in favour of the applicant, purporting to transfer the suit property in the applicant's favour for consideration of Rs. 7 crores. The registered Sale Deed very categorically states that the suit property, which the applicant has purported to purchase, had been mortgaged to the respondent-bank. Therefore, at the behest of such applicant, there is no question of recall of the order dated 5 February 2016.

5. At this stage, though it is true that this Court will not decide whether the applicant herein was also a party to the fraud played by the two petitioners, it is quite apparent that the applicant herein claims through the said two petitioners and further, the applicant has purchased the suit property during pendency of proceedings before the authorities and with knowledge that the same had been mortgaged in favour of the respondent-bank. In such circumstances, there is no question of recall at the instance of the applicant. If the applicant is indeed innocent as it claims to be, then it is for the applicant company to initiate appropriate action against the petitioners for recovery of amount allegedly paid by it to the petitioners.

6. For all the aforesaid reasons, the applications are dismissed as misconceived. There shall be no order as to costs.

(M. S. SONAK, J.)