pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.17264 OF 2015

M/s. Neel Taj Tours and Travels ... Petitioner
Versus
Rajapur Sahakari Bank Ltd. and Ors. ... Respondents

Mr. Kishor Patil for the Petitioner.
Mr. P.G. Sawant, AGP for the Respondent Nos.8 and 9.

CORAM : A.S. OKA, J.

DATE : 22nd NOVEMBER, 2016

P.C.

1 Heard the learned counsel appearing for the Petitioner and the learned AGP for the Respondent Nos.8 and 9. The first Respondent - Bank filed a dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act") against the second to seventh Respondents to which the Petitioner was subsequently impleaded as a party. According to the case of the first Respondent, a loan was sanctioned by the first Respondent to the tune of Rs.14.50 lakhs to the second to fifth Respondents. According to the case of the Petitioner, the fifth and sixth Respondents guaranteed repayment of the loan. An equitable mortgage was executed by the borrowers on 21st January, 1991 in respect of the land bearing Survey No.226, Hissa No. 2, CTS No.639, Film City Road, Goregaon, Mumbai.

2 According to the case of the first Respondent, the borrowers committed default and that is why the dispute came to be filed by the first Respondent. The contest to the said dispute was only by the present Petitioner who was the seventh opponent to the dispute. His contention is that the owner of the mortgage property was one Soma Sakriya Dhangde and that he has executed an agreement for sale in favour of the present Petitioner on 28th November, 1993. It was the case of the Petitioner that an application has been made to the Collector for grant of permission to the said Soma Sakriya Dhangde to sell the alleged mortgaged property to the Petitioner as the said Soma was a tribal. The learned Judge of the IIIrd Co-operative Court, Mumbai by Judgment and Order dated 14th January, 2013 held that the property subject matter of equitable mortgage dated 21st January, 1991 stands validly mortgaged as a security for recovery of the loan advanced by the first Respondent and that the first Respondent was entitled to attach the same for the satisfaction of the Judgment and Award dated 20th October, 1995 already made by the Co-operative Court.

3 Being aggrieved by the said Judgment and Order dated 14th January, 2013, the present Petitioner preferred an Appeal before the Co-operative Court. By the impugned Judgment and Order dated 15th June, 2015, the learned Member of the Maharashtra State Co-operative Appellate Court has dismissed the Appeal.

4 The submission of the learned counsel appearing for the Petitioner is that a tribal was the owner of the property which was allegedly mortgaged in favour of the first Respondent. He urged that apart from the fact that the borrowers of the first Respondent had no title to the said property, the mortgage allegedly executed was void as there was no prior permission of the Competent Authority was obtained. He submitted that several steps were taken on the basis of the agreement for sale executed in favour of the Petitioner on 28th November, 1993 and in fact the application made to the Collector for grant of permission to sell the property to the Petitioner was pending. He urged that in fact the borrowers were also claiming only on the basis of an agreement for sale. He submitted that without going to the issue of validity of mortgage, the Courts below ought not to have rejected the claim of the Petitioner.

5 I have given careful consideration to the submissions. The first Respondent – Bank had advanced loan to the second Respondent and its partners on 25th November, 1990. There was an equitable mortgage executed by the borrowers in favour of the first Respondent on 21st January, 1991 in respect of the property subject matter of this Petition. As the borrowers committed default, the first Respondent – Bank filed dispute under Section 91 of the said Act of 1960.

6 The claim of the Petitioner is that one Soma Sakriya Dhangde is the owner of the mortgaged property who is a tribal. The Petitioner in claiming only on the basis of an agreement for sale. The Appellate Court in paragraph 29 of the impugned judgment has rightly observed that the agreement for sale does not confer any title on the Petitioner in respect of the property subject matter of mortgage. Section 54 of the Transfer of Property Act, 1882 clearly lays down that an agreement for sale does not create any title in the property in favour of the purchaser and no right, title and interest in the property is transferred to the purchaser on the basis of such an agreement. Therefore, the Courts below were absolutely right when they declined to entertain the claim of the present Petitioner on the ground that the Petitioner had no right, title and interest in respect of the property subject matter of the mortgage. There is no reason to interfere with the concurrent orders passed by the Courts below. Accordingly, Writ Petition is rejected. It is, however, made clear that no adjudication is made on the issue of legality and validity of the mortgage relied upon by the first Respondent.

(A.S. OKA, J)