

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***APPEAL FROM ORDER NO. 232 OF 2015
with
CIVIL APPLICATION NO. 290 OF 2015
and
CIVIL APPLICATION NO. 1150 OF 2015***

The Chembur Nagarik Sahakari Bank Ltd. & Anr. ... Appellants.

V/s.

Mr. Arvind Ramchandra Choukekar and Anr. ... Respondents.

Mr. D.A. Nalawade i/b. Ravindra Lokhande and Geetanjali Golatkar for
the Appellants/Applicants in both CAs.

Mr. Ravindra M. Sawant for Respondent 1.

Mr. Rohan Surve for Respondents 3 to 5.

CORAM : N.M. JAMDAR, J.

DATE : 4 APRIL, 2016.

ORAL ORDER :

Heard learned Counsel for the parties. Admit. Taken up for
disposal by consent of parties.

2 The Appellant - Chembur Nagarik Sahakari Bank challenges
the order passed by the City Civil Court, Dindoshi in Notice of Motion
No. 1055 of 2014 dated 5 May 2014 allowing the Notice of Motion filed

by Respondent No.1 and restraining the Appellants from taking possession of the suit flat.

3. The Suit property is a Flat No. 501, A wing, Green Field Bldg. Thakur Complex, Aliyavar Jung Marg, Kandivali (East), Mumbai – 400 101. The Appellant filed an application for obtaining a recovery certificate under Section 101 of Maharashtra Co-operative Societies Act, 1960, stating that one Surendarkumar Sharma - Respondent No.3 obtained loan of Rs.50,00,000/- and documents that were produced for obtaining loan was a registered Agreement of Sale entered into Surendarkumar Sharma and the Respondent No.1. The recovery proceedings were allowed. A Revision was filed by the Respondent No.1 which was not allowed and thereafter, the Respondent No.1 filed a Writ Petition No. 7550 of 2013, wherein this Court directed the Divisional Joint Registrar to dispose of the matter. Thereafter, the Respondent No.1 filed another Writ Petition which was not entertained and the Respondent No.1 filed the present Civil Suit. According to the Respondent No.1 that the agreement of sale was bogus as his mother was stated to be a seller, had long since expired.

4. The above mentioned Notice of Motion was taken out by Respondent No.1. The Appellant - Bank contested the Notice of Motion contending that the Appellant – Bank took adequate care before granting the loan and that there is a foul play by the Respondent No.1 who has set up the Respondent No.3 – borrower to obtain loan and thereafter, challenged the deed. The learned City Civil Court Judge granted an

interim relief by the impugned order primarily on the ground that the Appellant – Bank ought to have been more careful while granting the loan. He also held that the issues raised by the parties will require adjudication and accordingly passed the impugned order.

5. I have heard the learned Counsel for the parties. The learned Counsel for the parties have reiterated their submissions made before the City Civil Court. The Appellant has filed a compilation of various documents. Perusal of the documents show that the grievance made by the Appellant – Bank that the manner in which the loan is taken is a part of a larger conspiracy, prima-facie, cannot be brushed aside. Similar observation is already made by this Court on 20 December 2013. The learned Counsel for the Appellant has also placed on record a First Information Report registered by Swargate Police Station, Pune on 4 February 2016 against Respondent No.1 with an allegation of defrauding Ratnakar Bank Ltd. with similar facts as in the present case. The matter therefore needs to be addressed immediately as to prohibit any further innocent party or by bank being embroiled in similar litigation.

6. In my opinion therefore, merely on the ground that the Bank was not careful in granting the loan, a relief of such nature need not automatically follow. Ultimately, what is advanced is depositors money. There are Criminal prosecutions pending regarding fraudulent loan transaction. It is informed that the Respondent No.1 is arrested and presently in the custody. Therefore, the matter has not only remained a routine matter of recovery of loan, but has acquired wider connotations.

7. In the circumstances therefore, the summary approach adopted by the learned City Civil Court in granting an interim relief cannot be sustained and the City Civil Court will have look into the rival contentions in detail before granting any further protection to avoid occurrence of any such events. It is also necessary that the Court Receiver is appointed on the suit flat for which the Civil Application No. 1150 of 2014 is taken out by the Appellants. In the circumstances, the Appeal and Civil Applications are disposed of as under :-

(a) The impugned order dated 5 May 2014 is quashed and set aside and Notice of Motion No.1055 of 2014 stands restored to the file of the learned City Civil Court, Dindoshi.

(b) The City Civil Court, Dindoshi will dispose of the Notice of Motion withing period of twelve weeks from today on its own merits.

(c) All contentions of the parties are kept open.

(d) The Court Receiver is appointed on the suit flat that the Flat No. 501 A wing, Green Field Bldg. Thakur Complex, Aliyavar Jung Marg, Kandivali (East), Mumbai – 400 101, who will forthwith take symbolic possession of the suit premises. The attachment granted earlier will continue.

8. The Appeal from Order and the Civil Applications are accordingly disposed of.

(N.M. JAMDAR, J.)