

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1506 OF 2016

MR. SUNIL ANANDRAO PAWAR

...Petitioner

Versus

THE COSMOS CO-OPERATIVE
BANK LTD. AND ANR.

...Respondents

....

Mr. Sandeep S. Jinsiwale, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 4th FEBRUARY, 2016

P.C.

1. Heard Mr. Sandeep Jinsiwale, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'judgment debtor No.2', has challenged the judgment and order dated 9.10.2015 passed by learned Adhoc District Judge-1, Pune below Exhibits-18A and 19 in Darkhast No.243/2015. By that order, learned trial Judge rejected application Exh.18A made by judgment debtor Nos.1 and 2 for setting aside order dated 30.4.2015 passed below application Exh.10 filed by the decree holder

under Order XXI Rule 54 of Code of Civil Procedure, 1908 (for short, 'CPC') for restraining judgment debtor No.2 and other mortgager from transferring or charging the property specified in schedule thereunder annexed by sale or gift or otherwise and that all persons are prohibited from receiving same by purchase, gift or otherwise; (ii) for declaring that the order of the Arbitrator is null and void amongst other prayers. Learned trial Judge allowed application Exh.19 filed by the decree holder under Order XXI Rule 64 of CPC for issuing the sale proclamation by way of public auction against the attached property of judgment debtor No.2 as per order below Exh.10 for satisfaction of the decretal amount.

3. Mr. Jinsiwale submitted that judgment debtor No.3 is under liquidation. A Liquidator is appointed on judgment debtor No.3. The decree holder has to serve the Liquidator. Judgment debtor No.2 is the Managing Director of judgment debtor No.1 and judgment debtor No.3. The entire recovery cannot be passed on to judgment debtor No.2. Judgment debtor No.3 stood surety to the loan advanced to judgment debtor No.1. He submitted that by order dated 30.4.2015, learned trial Judge

issued injunction restraining judgment debtor No.2 and other Mortgagor from transferring or charging the property specified in the schedule therein by sale, gift or otherwise and also restrained all persons from receiving same by purchase, gift or otherwise. Learned trial Judge also directed judgment debtor No.2 and others to attend the Court on 25.7.2015 to take notice of the date fixed for settling the terms of proclamation of the sale.

4. Judgment debtor Nos.1 and 2 therefore took out application Exhibit-18A under Section 47 read with Order 21 Rule 26 of CPC read with Section 279 of Companies Act. The decree holder took out application Exhibit-19 under Order 21 Rules 64 to 66 of CPC for issuing proclamation of sale by way of public auction against the attached property of the judgment debtors and others as per order dated 30.4.2015 below Exh.10.

5. I have considered the submissions advanced by Mr. Jinsiwale. I have also perused the material on record.

6. It is not in dispute that the decree holder has filed execution proceedings on the basis of the award dated 20.6.2013

made by the learned Arbitrator in Reference No.ARB/COS/15/2013 between respondent decree holder and judgment debtors. Learned Arbitrator held that judgment debtor Nos.1 to 3 are jointly and severally liable to make the repayment of Term Loan Account No.012801001144 amounting to Rs.21,56,44,422.00 to the claimant bank together with interest @ 16% per annum thereon from 9.2.2013 till realization of entire claim. Learned Arbitrator further held that judgment debtor Nos.1 to 3 are jointly and severally liable to make repayment of Term Loan Account NO.01280100985 amounting to Rs.29,75,02,967.00 to the claimant bank together with interest @ 16% per annum thereon from 15.2.2013 till realization of entire claim.

7. While passing the impugned order, learned trial Judge has noted that the award made by the Arbitrator is not stayed. Judgment debtors have not made any efforts to deposit the decretal amount so as to satisfy the decree. There is no stay order to the execution petition from any superior Court. If the injunction as prayed is not granted, judgment debtors will dispose of the properties and it will cause huge loss to the

decree holder in Crores of rupees.

8. Mr. Jinsiwale submitted that entire recovery cannot be passed on to judgment debtor No.2. I do not find any merit in this submission, as the award is made jointly and severally against all the judgment debtors. That apart before passing the order dated 30.4.2015 below Exhibit-10, learned trial Judge also heard judgment debtors. For all these reasons, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence the Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Deshmane (PS)