

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.422/2016
IN
WRIT PETITION NO. 1785/2011

Sangli Sahakari Bank Ltd. ... Applicant

V/s.

The Divisional Joint Registrar,
Coop. Societies, Mumbai Division & Ors. ... Respondents

Mr. Brian D'Lima i/b. D'Lima & Associates for the Applicant
Mr. A. S. Pal i/b. J. J. Associates & Siddharth Mehta for respondent
Nos.3 and 4.

CORAM: K.K. TATED, J.
DATED : NOVEMBER 24, 2016

P.C. :

1. Heard the learned counsel for the parties. Though other respondents are duly served, none appeared for them.
2. The learned counsel for the respondent Nos.3 and 4 filed Affidavit-in-Reply dated 22.11.2016. Same is taken on record.
3. By this Notice of Motion, the petitioner is seeking an order of injunction restraining the respondents from taking any adverse action against the applicant petitioner on the basis of impugned order dated 07.05.2011 passed by respondent No.1.

4. In the present proceedings, the petitioner published an advertisement in local news paper dated 19.09.2007 for an auction sale of the properties situated at Post – Dighoda, Tq. Uran, Dist. Raigad from Sy.No.35,38,37,33,56,8,11,18,32,53 on “where is as is basis” for recovery of their dues from one Vilas Transporter and M/s. Accrete Exim Pvt. Ltd. to the tune of Rs.21,19,46,679/- plus interest @ 21% p.a. from 13.09.2007. In that auction proceeding, the respondent Nos.3 and 4 purchased suit property for sum of Rs.11,00,11,000/-. They deposited the entire amount with the petitioner. Thereafter the petitioner executed sale certificate dated 19.03.2008 after confirmation of sale.

5. The learned counsel for the petitioner submits that after sale confirmation in favour of respondent Nos.3 and 4, they called upon them to take possession of the suit premises. At that time, the respondent Nos.3 and 4 disputed the same on the ground that part of the land was declared as forest land. Their grievance was that same was not disclosed by the petitioner in proclamation of sale. Hence, it is not possible for them to take possession. They called upon the petitioner to refund the entire amount with interest. Apart from that respondent No.3 and 4 filed criminal complaint with Dadar Police Station. They also approached the RBI as well as respondent No.1 for taking action against the petitioner for non compliance of order dated 07.05.2011 i.e. refund of the entire amount. He submits that pursuant to the said complaint filed by respondent Nos.3 and 4, the respondent No.1 is calling upon the petitioner to comply with the said order immediately otherwise they will take action against them. Hence, the

petitioner moved this Notice of Motion after more than five years when the respondent No.1 called upon them to comply with the said order. He submits that the petition is pending for final disposal on merits. He submits that if any action is taken by respondent No.1 against the petitioner for refund of the said amount to respondent Nos.3 and 4, nothing will survive in the Writ Petition. He submits that the petitioner has good chance of success in the Writ Petition. He submits that pending hearing and final disposal of the Writ Petition, the respondent may be restrained by an order of injunction from taking any action against the petitioner on the basis of the impugned order dated 07.05.2011 passed by respondent No.1.

6. On the other hand, the learned counsel for respondent Nos.3 and 4 vehemently opposed the Notice of Motion. He submits that the petitioner filed the Notice of Motion after more than 5 years from the date of admission of the Writ Petition i.e. 17.10.2011. He submits that in the meanwhile, the petition was dismissed for default. Thereafter same was restored by order dated 31.08.2015 in Notice of Motion No.306/2015. He submits that they already paid sum of Rs.11,00,11,000/- to the petitioner. He submits that because of reservation of forest, it is not possible for them to take possession and use the same for their business purpose. He submits that the impugned order was passed by the Authority on 17.01.2011 and till this date, the petitioner has not refunded the amount. Hence, there is no of question of granting any interim relief in favour of the petitioner. The learned counsel for the respondent Nos.3 and 4 submit that if this court grants stay and/or order of protection in favcour of the petitioner, in that case, hearing of the Writ Petition may be expedited.

7. It is to be noted that in the present proceedings after following due process of law the petitioner held auction of the suit property. Respondent Nos.3 and 4 declared as highest bidder. The petitioners are ready and willing to hand over the possession of the suit premises to the respondent Nos.3 and 4, but they are not ready to accept the same because of forest reservation. In any case, the Writ Petition is admitted by this court on 17.10.2011. The main contention of the petitioner is that there is no question of refund of the amount to respondent Nos.3 and 4 because they already appropriated the said amount towards the discharge of borrowers liability. Considering this fact and as the petition is pending, I am of the opinion that in the interest of justice, it is necessary to stay the operation and implementation of the impugned order dated 07.05.2011 passed by the Sub Divisional Registrar, Cooperative Societies, Mumbai Division Mumbai in Revision Application No.385/2010.

8. Hence, the following order is passed:

- a. The operation and implementation of the order dated 07.05.2011 passed by the Sub Divisional Registrar, Cooperative Societies, Mumbai Division Mumbai in Revision Application No.385/2010 is stayed till hearing and final disposal of the Writ Petition No.1785/2011.
- b. Hearing of Writ Petition is expedited.
- c. Office is directed to place the Writ Petition on board for final hearing in weekly board as per its turn in expedited matters.
- d. Notice of Motion stands disposed of accordingly.
- e. Rights and contentions of the parties are kept open.

(K.K. TATED, J.)