

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.41300 OF 2016

ORDER:

Petitioners in I.A.No.108 of 2015 (*sic.2016*) in I.A.No.48 of 2015 in I.A.No.49 of 2015 in C.T.A.No.5 of 2015 are the writ petitioners and they challenge the order dated 15.10.2016 refusing the request of petitioners to come on record as respondents 5 to 9 IN C.T.A.No.5 of 2015.

Heard Mr.V.Hari Haran for petitioners.

Briefly stated, the case of petitioners is that on 28.02.1998 agreement of sale was entered into between 4th respondent and the petitioners herein to purchase house bearing No.8-3-976/92 at Shalivahananagar, Sinagar Colony, Hyderabad. The petitioners allege to have paid substantial sale consideration under agreement of sale dated 28.02.1998 to 4th respondent. The petitioners claim possession of H.No.8-3-976/92 by way of part performance from respondent No.4. The grievance of petitioners starts when the 4th respondent on 30.07.1998 availed loan of Rs.18,50,000/- from the 2nd respondent-Bank. The 4th respondent, it is alleged, deposited title deed of house bearing No.8-3-976/92 with 2nd respondent-Bank towards security for repayment of the outstanding amount. The loan became overdue, resulting in recovery proceedings before 3rd respondent. The 3rd respondent passed award in A.R.C.No.21 of 2000 dated 11.05.2000. The 2nd respondent filed C.T.A.No.5 of 2015 for the following relief:

“For the reasons/grounds let in herein above and other grounds that may be urged at the time of hearing of the appeal, the appellant herein prays that the Honourable Coop Tribunal may be pleased to call for the records of the 1st respondent i.e., Deputy Registrar of Cooperative Societies/Divisional Cooperative Officer, Golconda division, Hyderabad and

- “1. declare that the award dt.12.1.2015 in ARC.No.21/2000 is illegal, contrary to the facts on record colourful exercise of the power and probabilities of case violative of the cardinal principles of natural justice besides in utter violation of Rule 49(4) of APCS Rules besides contrary to the judgment of the Honourable High Court.
2. Modify the award holding that the property bearing H.No.8-3-976/92, on Plot No.92, admeasuring 350 sq. yds situated at Salivahana Nagar, Hyderabad which is under attachment u/s 73 of Act is subsisting and available to the Bank as security for the loan availed by the 2nd respondent.

and pass such other order orders as this Hon’ble Tribunal may deem fit and proper in the interests of justice.”

On 02.04.2016, the 2nd respondent filed the instant application to implead petitioners herein as respondent Nos.5 to 9 in I.A.Nos.48 and 49 of 2015 in C.T.A.No.5 of 2015. As already noted, the prayer was rejected. Hence, the writ petition.

The parties with perseverance and consistency have been working out civil, criminal and quasi judicial remedies before civil Court, criminal Court and the Deputy Registrar under the Cooperative Societies Act. Though extensive submissions are made in this behalf, for the view I am taking in this order, these submissions are not referred to for brevity.

Mr.Hari Haran appearing for petitioners relied upon substantially all the proceedings which are pending as on date or

decided by the Court/authority to contend that having regard to the nature of prayer made in I.A.Nos.48 and 49 of 2015, the presence of petitioners is both necessary and proper, the prayer to implead as respondents 5 to 9 ought not to have been rejected by the Tribunal. For brevity and also to avoid burden, the instant order with earlier adjudications, I propose to refer to a few of the cases which have bearing on the disposal of the writ petition viz., order dated 25.04.2008 in C.T.A.No.243 of 2004, order dated 28.07.2004 in Claim Petition No.1 of 2001 in A.R.C.No.21 of 2000, W.P.Nos.21151 and 23718 of 2008 and 13216 of 2009, W.A.Nos.1426, 1427 and 1428 of 2013 and W.P.No.17925 of 2014. The summary of the cases referred above is that the writ petitioners filed Claim Petition No.1 of 2001 in A.R.C.No.21 of 2000. On 28.07.2004, the claim of petitioners was accepted. The 2nd and 4th respondents filed C.T.A.No.14 of 2008 and C.T.A.No.243 of 2004. The Tribunal, by common order dated 25.04.2008, dismissed the appeals. The 2nd respondent-Bank and 4th respondent filed W.P.No.21151 and 23718 of 2008 and 13216 of 2009. On 23.07.2013, writ petitions were allowed and the operative portion of the common order reads thus:

“When the said order was challenged before the Tribunal in C.T.A.No.243 of 2004 by the borrower and in C.T.A.No.14 of 2008 by the Bank, the Tribunal also did not consider the scope of enquiry in a claim petition to raise attachment before judgment governed by Rule 54 (3) and committed the same mistakes committed by the Arbitrator in the order dt.28-07-2004 challenged before it. Thus orders dt.25-04-2008 in C.T.A.No.243 of 2004 and C.T.A.No.14 of 2008 are vitiated by error apparent on face of record. So the W.P.No.s 21151/2008 and 23718/2008 are allowed and orders dt.25-04-2008 in C.T.A.No.243 of 2004 and C.T.A.No.14 of 2008 confirming the order

dt.28.7.2004 in Claim petition No.1/2001 in ARC No.21/2000 are set aside.

It is made clear that the observations made in the said orders are liable to be ignored by the Arbitrator while deciding A.R.C.No.21 of 2000 and by the Civil Court while deciding O.S.No.9 of 2003. It is also made clear that in the event the A.R.C.No.21 of 2000 is allowed, the agreement holders are entitled to file a claim petition under Rule 52 (21) (a) and any findings made in the above orders shall be ignored while considering such a claim petition, if filed by the agreement holders. This is because at present there is only attachment before judgment under Section 73 of the Act r/w Rule 54 (1) and as per sub Rule (4) of Rule 54, such attachment will not affect the rights existing prior to attachment, of persons not parties to the proceedings in connection with which the attachment was made, nor bar any person holding a decree against the person whose property is attached from applying for sale of the property under attachment in execution of such decree. Therefore it is clear that the order dt.11-05-2000 passed by the Arbitrator in A.R.C.No.21 of 2000 does not affect the rights of the agreement holders who are claiming interest in the property under the alleged agreement of sale dt.28-02-1998. In view of this the arbitrator could not have impleaded the agreement holders vide orders dt.24.3.2007 in I.A.No.5/2006 in ARC No.21/2000 and the Tribunal in CTA No.66/2007 erred in confirming it. Both the arbitrator and the tribunal have not taken note of Rule 54(4) of the above Rules. Moreover, the agreement holders are admittedly strangers to the loan transaction between the Bank and the borrower. So in a proceeding between the borrower and the Bank initiated under S.61 of the Act, such persons are not proper or necessary parties merely because they claim to have an interest in the property mortgaged by the borrower to the Bank. Rule 54(4) clearly protects the interest of the agreement holders. Thus their orders are vitiated by error apparent on face of record. So W.P.No.13216/2009 is also allowed and the order dt.25.4.2008 in CTA No.66/2007 of the Tribunal confirming the order dt.24.3.2007 in I.A.No.5/2006 in ARC No.21/2000 of the arbitrator is set aside”.

The petitioners herein filed W.A.Nos.1426, 1427 and 1428 of 2013 and on 28.11.2013, the Division Bench disposed of the appeals with the following finding:

“Mr. S.Ravi’s clients i.e. the appellants before us, have filed a suit for specific performance not only against the vendors but also against the bank and such suit is pending before the civil court. Therefore, on the strength of the above said legal provisions, we clarify that the decision rendered by the learned Trial Judge will not be a binding or influencing factor and it will not operate as res judicata. The learned Judge shall obviously proceed in accordance with law as if such judgment is not rendered and the parties are free to approach the civil court for appropriate remedy, if so advised. The writ appeals are accordingly disposed of. No order as to costs. As a sequel to the disposal of the appeals, all the pending interim applications shall also stand disposed of”.

The adjudication has not given quietus to the warming up applications and the 2nd respondent filed W.P.No.17925 of 2014. On 11.11.2014, the writ petition was allowed and the finding reads thus:

“As rightly pointed out by Sri Vedula Srinivas, learned Counsel for the petitioner, the Division Bench has not reversed the Judgment of the learned single Judge and that it has only clarified the effect of the said Judgment keeping in view the provisions of Section 54(4) and 52(21)(c) of the Act under which respondent No.3 is entitled to pursue his remedy of a civil suit to establish his right over the property which is the subject matter of the proceedings before the competent authority under the provisions of the Act and the Rules made thereunder. The observations of the Division Bench that the Judgment of the learned single Judge will not be binding or be an influencing factor and that the same will not operate as res judicata are made in the context of reserving the right of respondent No.3 to pursue the remedy of a civil suit. These observations cannot be understood as the Division Bench overturning the Judgment of the learned single

Judge on any of the aspects dealt by him in respect of the dispute pending before respondent No.1. Therefore, the said Judgment binds respondent No.1 and consequently he cannot issue notice to respondent No.3 and allow him to participate in the arbitration proceedings. On the above analysis, the Writ Petition is allowed as prayed for, however, without prejudice to the right of respondent No.3 to pursue the pending civil suit filed by him”.

In this background, the petitioners again attempted to implead as respondents 5 to 9 in C.T.A.No.5 of 2015. This Court is of the view that having regard to the observations/directions issued by this Court in the writ petitions decided between parties, the application at the instance of writ petitioners, who are for the present are agreement holders and the suit O.S.No.9 of 2003 for specific performance is pending decision, more particularly when 2nd respondent-Bank is one of the defendants to come on record as respondents, cannot and could not be countenanced. The extent of adjudication by Tribunal is concerned, observations as understood by the parties are already made. The Tribunal, having regard to the orders of this Court, held as follows:

“In view of the findings of the Hon’ble High Court, this petitioners are no way concerned with the dispute between the respondent No.1 and 2 who are the borrower and the bank, the bank initiated proceedings under Section 61 of the Act, therefore these petitioners are not proper and necessary parties. When the bank approached the Divisional Bench of Hon’ble High Court by way of Writ Petition No.17925 of 2014 challenging the issuance of the notice to the respondent No.3 who is the petitioner No.1 herein issued by the Arbitrator, it is observed that the judgment of the Hon’ble High Court binding on the respondent No.1 and consequently he cannot issue notice to the

respondent No.3 who is the petitioner No.1 and allow him to participate in the arbitration proceedings. The above findings of the Hon'ble High Court clears that the petitioner No.1 is not entitled to implead as party in the proceedings pending between respondent No.1 and 2. Accordingly, this point is answered against the petitioners".

The Tribunal, having appreciated the purport of observations already referred by this Court, has rightly rejected the prayer to implead petitioners as respondents 5 to 9.

By keeping in view earlier findings in the orders referred to above, the instant writ petition deserves to be dismissed and is, accordingly, dismissed. It is made clear that the prayer to come on record as respondents in C.T.A.No.5 of 2015 is rejected and it shall not be understood as this Court expressing any view on the issue between the parties pending before the Civil Court. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

21st December, 2016

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