IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9978 OF 2013 IN
WRIT PETITION NO.3859 OF 2008

Radheshyam Ramkisan Mor ... APPLICANT

VERSUS

Pachora Peoples Cooperative Bank Ltd.
and others ... RESPONDENTS

.....

Shri Girish Rane, Advocate for applicant
Shri Amol Sawant, Advocate for respondent No.1A & 1B in W.P.

.....

CORAM: S. B. SHUKRE, J.

DATED: 20th January, 2017.

ORAL ORDER :

1. Heard learned counsel for the applicant and learned counsel for the borrowers, who are respondent Nos.2A and 2B in this application. Nobody appears on behalf of respondent No.1 Bank, the lender and respondent No.3, another borrower.

2. By the order passed by this Court on 22/7/2016, it was made clear that, in case of non-appearance on behalf of the original petitioner, the Civil Application shall be proceeded with.

3. It is the contention of learned counsel for the applicant that, the original borrowers have already offered

another property, the present valuation of which is about Rs.2.5 Crores, for being attached as a security for payment of the loan amount, if any, but no response is given by the Bank in this regard. He also points out from the affidavit filed by Shri N.B. Tillu, Chief Executive Officer of the Bank that, the Bank has been presuming erroneously that Writ Petition No.3859/2008 would not be heard finally for at least 8 to 10 years. He also submits that, in this affidavit dated 13/3/2016, there is a wrong mention about non filing of application by the borrower, offering this property as a security for repayment of loan. He submits that, by making such a statement, the original petitioner - Bank only brought on record half truth. He submits that, although before filing the detailed affidavit the original petitioner Bank did not file any application in this regard before the High Court, similar application has already been filed by the borrowers before the Co-operative Court and that was on 18/6/2000.

4. Learned counsel for the borrowers submits that, the borrowers are still ready to offer their property in view of the release of the property belonging to this applicant. He submits that, in the affidavit of the borrowers dated 28/3/2016, paras 8, 9 and 10, there are statements regarding willingness of the borrower to offer his property for being attached in the dispute. He also submits that, the valuation report dated 1/3/2016 showing valuation of the property in the year 2016 has also been

filed along with this affidavit, but the Bank is maintaining a silence on this offer of the Bank.

5. Having considered these submissions of the applicant, one of the guarantors and the borrowers, and also having gone through the affidavits, to which my attention has been invited, I am of the view that, for reasons best known to the original petitioner Bank, the Bank is maintaining a complete silence as regards the offer which has been made by the borrowers and which appears to be reasonable at this juncture. The affidavit dated 13/3/2016 of the Bank has not stated anything about such offer having been already made before the Co-operative Court and on the other hand, by making a statement that there is no application of the borrower to offer other security for the Bank, it appears to have made an attempt to mislead the High Court. If such a statement was to be made, fairness required that the petitioner Bank also placed it on record the facts that there was one similar offer made by the borrower before the Co-operative Court and that was not accepted by the petitioner Bank. Then, one does not know as to why the petitioner Bank is making an assumption that at least 8 to 10 years period of time will be required for final hearing of the Writ Petition. Of course, if the petitioner Bank chooses to remain absent, as it has now done, one would know perhaps that it may not be assumption but knowledge or intention of the petitioner

Bank to carry on with the dispute for at least 8 to 10 years. Such an attitude on the part of the petitioner Bank, therefore, would be required to be curbed.

6. In the circumstances, I am of the view that this application deserves to be allowed and it is allowed accordingly. The properties belonging to the applicant, and which are under attachment as per the order of this Court, passed on 29/7/2008, and continued to be attached thereafter, are released and the properties offered by the borrowers and described in para No.8 of the affidavit dated 28/3/2016 filed by Radheshyam Ramkisan Mor may be considered by the petitioner Bank for being attached as a security for repayment of the security for the repayment of the loan during the pendency of the Writ Petition, within 8 weeks from the date of this order and till that time, the borrowers shall preserve these properties without creating any encumbrance or charges whatsoever thereupon, so that, if accepted by the petitioner Bank, they can serve as security for repayment of the loan by their being attached for the purpose.

7. Civil Application is disposed of.

(S. B. SHUKRE)
JUDGE

fmp/ca9978.13