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

901 CIVIL APPLICATION NO. 9664 OF 2017
With
CIVIL APPLICATION NO.8564 OF 2017
IN
IN FIRST APPEAL NO.2749 OF 2009

MRS. SANYOGITA N JADHAV
VERSUS
ABHYUDAYA CO-OPERATIVE BANK LTD.

Shri. N.B. Suryawanshi, Advocate, instructed by Shri. Dnyaneshwar J. Patil, Advocate, for applicant.

Shri. S.S. Deve, Advocate, for respondent.

**Coram: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

Date : 11 AUGUST 2017

ORAL ORDER:

1) By this civil application, the applicant seeks directions against the respondent bank to remove the lock and seal put up on the flat described in prayer clause (b) of the civil application.

2) Learned counsel for the applicant states that the first appeal filed by the applicant arising out of the order passed by the civil court allowing the application of

the bank under Order 7 Rule 11 of the Civil Procedure Code is pending for hearing for final disposal before this Court. He submitted that pursuant to an order passed by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai in Case No.353/SA/2016, the respondent-bank has already taken possession of the flat described in prayer clause (b) of the civil application.

3) The learned counsel for the applicant invited our attention to the terms and conditions of the lease of plot granted by the Government on which the mortgaged flat is constructed. He submitted that no mortgage could have been created without obtaining prior consent of the Collector. He submitted that creation of mortgage itself is void and thus respondent bank cannot initiate any action for enforcement of the mortgage. The learned counsel for the applicant placed reliance on the judgment of the Supreme Court in the case of **State of U.P. v. United Bank of India & Others (2016) 2 SCC 757** in support of his submission.

4) The learned counsel for the respondent bank, on the other hand, submitted that as on today the claim of the bank against the applicant is more than Rs.60 crores. He submitted that though another property was mortgaged in favour of the respondent-bank by the applicant, the same is already sold by the applicant behind the back of the respondent. He submitted that there is no security available with the bank except the said flat in question. It is submitted that if this Court is inclined to grant injunction in favour of the applicant, the applicant shall be directed to deposit the amount as claimed by the respondent-bank.

5) The learned counsel for the applicant does not dispute that the applicant was fully aware of the conditions imposed by the Government while granting lease of the plot on which a building was constructed in which the applicant owns a flat. In our *prima facie* view the applicant had suppressed these conditions from the bank while obtaining substantial amount of loan and creating mortgage of the said flat in favour of the bank.

6) Though we have repeatedly called upon the applicant to deposit the reasonable amount as against the substantial amount claimed by the bank, of about Rs.60 crore as on today, learned counsel for the applicant, on instructions, states that his client is not willing to deposit any amount.

7) In our view, since the applicant has suppressed the conditions imposed by the Government while granting lease in respect of the said plot on which the flat is constructed and had obtained loan and creating mortgage, relief of injunction sought by the applicant, which is a discretionary relief, cannot be granted. We are not inclined to exercise our discretion to grant interim relief in these circumstances. We therefore, pass following order :-

8) Civil Application No.9664/2017 is dismissed No order as to cost.

9) Learned counsel for the applicant, on instructions, does not press Civil Application No.8564 of 2017. Civil Application No.8564 of 2017 is dismissed as withdrawn. No order as to cost.

Sd/- Sd/-
(SUNIL K. KOTWAL, J.) **(R.D. DHANUKA, J.)**

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