IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 955 OF 2017
IN
SECOND APPEAL NO. 614 OF 2016

M/s. Kisna Investment …Applicant

In the matter of:

Shri Pankaj Jagubhai Shah … Appellant
Vs.
State Bank of Saurashtra …Respondent

Mr. Rajeev Carvalho, instructed by Sriraj Menon for the Applicant.
Ms. Nayana Orak, instructed by Vinay Bhate for the Appellant.
Ms. Jinal Garasia, instructed by M/s. Consulta Juris for the Respondent.

CORAM: S. J. KATHAWALLA, J.
DATE: 10th July, 2017

P.C.:

1. The above Civil Application is taken out by the Applicant – M/s. Kisna Investment through its Proprietor Mr. Kapil Jain, for the following reliefs:

> " (a) *The Applicant be granted liberty to intervene in the present Second Appeal;*
> *(b) That this Hon'ble Court be pleased to order and direct the Appellant to implead the Applicant to be joined as party Respondent No.2 to the aforesaid Second Appeal No. 614 of 2016"*

2. The Applicant is the auction purchaser of a plot of land bearing Nos. 50 and 51 at Village Vervoor, Opp. Jungle Resort, Mahim-Manor Road, Tal. Palghar, Dist. Thane ("the said property") and is having the sale and title certificate in their name in respect of the said property.

3. The relevant fact in the matter are set out hereunder:

3.1 One Mr. Hashmukh Amrutlal Shah was the exclusive owner of the said property.

3.2 The said Mr. Hasmukh Shah availed certain loan/credit facility from the Respondent Bank and secured the loan/credit facilities extended by the Respondent Bank by mortgaging the said property in favour of the Respondent Bank.

3.3 After having mortgaged/hypothecated the said property with the Respondent Bank, the said Hasmukh Shah purportedly created a lease in favour of the Appellant by virtue of an unregistered lease deed dated 16th April, 2002.

3.4 Since Hasmukh Shah was irregular in adhering with the repayment schedule, on 28th February, 2006, the Respondent Bank through its Authorised Officer was constrained to issue a notice under the provisions of Section 13 (2) of the SARFAESI Act.

3.5 Pursuant to the steps taken under the SARFAESI Act, the Respondent

Bank took symbolic possession of the said property on 28th February, 2008.

3.6 The Applicant participated in the auction conducted by the Respondent Bank and was declared as the successful auction purchaser on 10th April, 2008. By 12th April, 2008, the Applicant paid the entire consideration of Rs. 91 lakhs to the Respondent Bank. The Respondent Bank thereafter took steps to hand over quite and vacant possession of the said property to the Applicant. At that stage the Appellant being the purported lessee of the property preferred a suit i.e. Civil Suit No. 92 of 2008 before the learned Second Joint Civil Judge, Junior Division, Palghar (trial Court), inter alia, praying for injunctive reliefs to protect his possession. The order of temporary injunction was granted by the trial Court on 17th June, 2008. The Respondent Bank preferred an Application seeking rejection of Plaint filed by the Appellant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) which application came to be allowed by the trial Court by its order dated 12th November, 2009.

3.7 Being aggrieved by the order dated 12th November, 2009, the Appellant preferred an Appeal before the Appellate Court. By an order dated 2nd January, 2010, the Appellate Court set aside the order dated 12th November, 2009 passed by the trial Court. The Respondent Bank preferred Second Appeal No. 137 of 2014 before this Court impugning the order of the Appellate Court dated 2nd

January, 2010. By its order dated 16th June, 2015, this Court was pleased to set aside the order of the Appeallate Court dated 2nd January, 2010 and remanded the matter back to the Appellate Court for fresh consideration.

3.8 On 12th January, 2016, the Respondent Bank issued a sale certificate in favour of the Applicant which was duly registered vide Sr. No. PLR 145/2016. The said property now stood registered in the name of the Applicant.

3.9 On being remanded by this Court, the Appellate Court considered the matter afresh and by an order dated 26th April, 2016, upheld the order dated 12th November, 2009 passed by the trial Court whereby the Respondent Bank's application under Order 7 Rule 11 for rejection of the Plaint had been allowed.

3.10 The Appellant being aggrieved by the order dated 26th April, 2016, preferred the above Second Appeal seeking injunctive reliefs against the Respondent Bank from dispossessing the Appellant from the said property. By its order dated 13th July, 2016, this Court has admitted the above Second Appeal and granted interim relief restraining the Respondent Bank from dispossessing the Appellant.

4. It is in these circumstances that the Applicant has submitted that the sale of the said property in his favour is complete and has attained finality. The name of the Applicant is entered into the revenue records. The Applicant has been

regularly paying the maintenance and taxes arising from the said property as and when they fall due in accordance with law. The Appellant on the other hand is foisting its claim on the basis of an unregistered deed of lease undisclosed to the Applicant, who is a bona fide purchaser for valuable consideration. It is therefore submitted on behalf of the Applicant that by virtue of it being a bona fide purchaser for valuable consideration, the Applicant is a proper and necessary party in the aforesaid Appeal. As stated earlier, this Court by its order dated 13th July, 2016, has admitted the Second Appeal. Any order/direction passed in the Second Appeal will have a direct bearing on the Applicant. The Respondent Bank has already sold and transferred the said property unto and in favour of the Applicant in accordance with law. It is therefore submitted that the above Application be granted and the Applicant be allowed to intervene in the present Second Appeal.

5. I am in agreement with the submissions made on behalf of the Applicant including the submission that any orders passed in the Second Appeal will have a direct bearing on the Applicant in whose favour the Respondent Bank has already sold and transferred the said property. The balance of convenience is also in favour of the Applicant. The Civil Application is therefore allowed and the Appellant is directed to join the Applicant as party Respondent No.2 to the

above Second Appeal No.614 of 2016. Amendment to be carried out on or before 6th November, 2017. The above Civil Application is accordingly disposed off.

(S.J. KATHAWALLA, J.)