

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO. 941 OF 2016

Shamsundar Bhagirath Jokhatiya
Since deceased through LR's
Yogita Chandresh Bhanushali

...Appellant

Versus

Special Recovery Officer
The Miraj Urban Co-operative Bank Ltd. & Ors.

...Respondents

.....

Mr.Ashutosh M. Kulkarni a/w. Mr.Akshay Kulkarni for the
Appellant.
Mr.S.G.Deshmukh, Senior Advocate i/b. Mr.Ramdas A.Shelke for
Respondent No.1.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 15, 2017**

P.C. :

1. By consent of the parties, Appeal from Order is heard finally and decided at the stage of admission.

2. This Appeal is directed against the order dated 05.08.2016 passed by the learned Principal District Judge, Sangli, thereby rejecting the application for interim injunction below Exhibit -6 in Regular Civil Appeal No. 225 of 2016. The learned 4th Jt.Civil

Judge, Junior Division, Sangli by order dated 30.04.2016 rejected the plaint under Order 7 Rule 11 (d) of the Code of Civil Procedure.

3. The appellant before this Court, who is a original plaintiff, has filed a suit against the Special Recovery Officer, who is appointed by the Co-operative Court for winding up the proceedings before the Co-operative Court. The appellant/plaintiff has purchased the mortgage property after the mortgage was redeemed. According to the appellant, he has filed the suit after mortgage was redeemed. In the legal proceedings of the Bank before the Co-operative Court, the said mortgage property was directed to be auctioned for recovery to satisfy the loan of the original borrower. The trial Court after considering Sections 107 and 163 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as “the said Act”) held that the Civil Court has no jurisdiction to try and entertain this matter and rejected the plaint. Against the said order, the appellant/plaintiff has filed Appeal before the District Court, Sangli. After considering the case of the plaintiff and also the objections taken by the defendants, the Appellate Court did not stay the order of the trial Court and refused to grant injunction on auction and further transfer of the suit property.

4. Learned counsel for the appellant has submitted that the Appellate Court ought to have appreciated that the suit is filed only

against the Special Recovery Officer. He has further submitted that the Special Recovery Officer is not an Officer within the definition of Section 2 (20) of the said Act and, therefore, the appellant does not seek any relief against the bank or the society. The suit cannot be covered under the said Act, as it is not pertaining to any business of the society.

5. Learned counsel for the respondents has pointed out that the bank is going to suffer directly due to the decision in this case. The bank and society are necessary and proper parties. He supported the decisions taken by the Courts.

6. Perused the orders of the trial Court and the Appellate Court. In view of Sections 107 and 163 of the said Act, the appointment of the Special Recovery Officer to recover the loan amount and the auction of the suit property carried out by him is a part and parcel of winding up and liquidation proceedings and, therefore, falls under Sections 107 and 163 of the said Act. Hence, the Civil Court has no jurisdiction to try and entertain this matter. I am of the view that the order dated 05.08.2016 passed by the learned Principal District Judge, Pune cannot be faulted with.

7. Learned counsel for the appellant submits that he wants to challenge this order before the Supreme Court and, therefore, he prays that the said order be stayed.

8. The operation of the said order is stayed for a period of three weeks from today.
9. With this, Appeal from Order is disposed of accordingly.

(MRIDULA BHATKAR, J.)