IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12771 OF 2015

Suresh Kalyani Bhanushali … .. Petitioner
vs
Bank of Baroda & ors .. Respondents

Mr.Sandesh Deshpande I/b Mr.Bhavesh Magam
for Petitioner
Mr.H.H.Nagi I/b M/s H.H.Nagi & Associates
for Respondent no.6

CORAM: R.M.BORDE AND
A.S.GADKARI, JJ
DATE: 06 MARCH, 2017

P.C.

1. The Petitioner is praying for issuance of a restraint order against the Respondents restraining them from taking further steps/action in respect of Flat no.2 Ambe Ashish,Rohani Darshan Cooperative Housing Society Ltd, Malbar Hill Road, Mulund (W) Mumbai-400 082 until the decision in the Restoration Application No.947 of 2014. The Debt Recovery Appellate Tribunal by an order dated 7 October 2014 dismissed the Appeal presented by the Petitioner and the Application seeking restoration of the said Appeal is stated to be pending. In the meanwhile, the Recovery Officer directed the Receiver to take police help for securing possession of the secured assets on 15 December 2015.

2. The Appeal presented by the Petitioner to the Debt

Recovery Appellate Tribunal was in respect of challenge to the order dated 17 August 2009 passed by Debt Recovery Tribunal, Pune. The Petitioner contends that he is a third party to the proceeding and is a bonafide purchaser of the suit property for value without notice and that his possession needs to be protected. The Debt Recovery Tribunal while rejecting the Application has observed in paragraph 6 of the order that the Petitioner in fact had intervened in Special Civil Suit No.24 of 1984 raising an objection to the attachment before Judgment. The opponent-Bank did not disclose in Special Civil Suit No.24 of 1984 particularly in the Application for attachment before Judgment that the suit flat was mortgaged with the Bank. It was contended that the Defendant No.2 in the suit had deposited the original sale deed and share certificate with the Bank but, mortgage could not be executed owing to some technical reason. The learned Civil Judge construed it as an attempt to create mortgage and thus an equitable mortgage in itself and rejected the Application.

3. The Petitioner herein, did not raise any challenge to the order of attachment before Judgment passed in Suit. Thus, the fact remains that the Petitioner was well aware of the fact that the property is under attachment and there was an equitable mortgage created by the Bank in respect of the property. The Petitioner inspite

knowledge in respect of the claim of the Bank has purchased the property. The claim of the Petitioner cannot be considered to be bonafide. It has been pointed out that the Petitioner has suppressed those fact while presenting Appeal No. 25 of 2007 to the Debt Recovery Appellate Tribunal. In the Appeal, a similar relief was claimed by the Petitioner. However, the Appeal came to be dismissed. The order of dismissal of the Appeal by the Debt Recovery Appellate Tribunal was challenged before the Debt Recovery Appellate Tribunal. Presentation of the Appeal by the Petitioner to the Debt Recovery Appellate Tribunal belatedly and allowing the appeal to be dismissed for want of prosecution and thereafter proceeding to present application for restoration of appeal, this sequence of events itself is an indicator of intention of petitioner to cause delay and defeat claim of the Bank.

4. In the circumstances as enumerated above, no interference is called for in the instant Petition.

5. Writ Petition is devoid of substance and is rejected. Interim relief granted earlier also stands vacated.

(A.S.GADKARI, J) (R.M.BORDE, J)