

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

WRIT PETITION NO. 1526 OF 2017

NARMADA BIKANRAO SHINDE AND OTHERS
VERSUS
ARUN BIKANRAO SHINDE AND ANOTHER

...

Advocate for the Petitioners : Shri Surve Hemant.

Advocate for Respondent 2 : Shri Adwant S.V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 30th July, 2018

Per Court:

1 I have heard the learned Advocates for the Petitioner and Respondent No.2. Respondent No.1, though served, has not caused an appearance either in person or through an Advocate.

2 The Petitioners are aggrieved by the impugned order dated 30.06.2016 passed by the Trial Court by which, an injunction in RCS No.439/2016 was refused. The Petitioners are also aggrieved by the order dated 25.10.2016 passed by the Appellate Court by which, Miscellaneous Civil Appeal No.107/2016 filed by the Petitioners, was rejected.

3 Considering the order that I intend to pass in the light of the statements of the learned Advocates made on instructions, I am not required to advert to their entire submissions. Suffice it to say that the

civil suit filed by the Petitioners would not be maintainable in view of the law laid down by the Honourable Supreme Court in the matters of *Sree Anandhakumar Mills Limited vs. Indian Overseas Bank and others*, 2018 (2) KHC 883 (Civil Appeal Nos.7214-7216 and 7213 of 2012 decided on 03.05.2018) and *Jagdish Singh vs. Heeralal and others*, (2014) 1 SCC 479 and by this Court in the matters of *Authorised Officer, Kotak Mahindra Bank Limited vs. M/s Brahmo Construction Pvt. Ltd.*, 2015 (4) ALL MR 32, *ICICI Bank Limited vs. Anil Printers Ltd.*, 2016(5) ALL MR 695, *Padma Ashok Bhatt vs. Orbit Corporation Ltd. and others*, 2017(6) Mh.L.J. 102 and *Allahabad Bank, Kolkatta vs. Hemantkumar Omprakash Malpani and others*, 2017(6) Mh.L.J. 252.

4 In view of the latest judgment delivered by the Honourable Supreme Court in the matter of *Sree Anandhakumar Mills (supra)*, it is obvious that RCS No.439/2016 filed by the Petitioners was not maintainable before the Trial Court and therefore, the plaint can be returned to the Plaintiffs.

5 The learned Advocate for the Petitioners/ Plaintiffs submits that he cannot canvass any point against the law laid down by the Honourable Supreme Court as well as by this Court and hence, the said suit may be disposed of as not being tenable so as to enable the Plaintiffs to withdraw the court fees and approach the Debts Recovery Tribunal

under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitisation Act"). Further request made is that the protection granted by this Court by its first order dated 03.02.2017 may be continued for a period of eight weeks.

6 The learned Advocate for Respondent No.2/ State Bank of India submits that at the most, the relief granted by this Court may be continued only for a period of two weeks and the said Respondent has nothing to say about the request of the Plaintiffs to withdraw the court fees.

7 I find from the record that, by the order of this Court dated 03.02.2017, the Petitioners have been protected and the property at issue is secured as no further interests are to be created in the said property.

8 As such, considering the above position and the statements made, this Writ Petition is disposed of with the following directions :-

(a) RCS No.439/2016 pending before the learned Civil Judge Junior Division, Aurangabad stands disposed of as being not maintainable in view of the law laid down by the Honourable Supreme Court in *Sree Anandhakumar Mills (supra)*, with liberty to the Plaintiffs to seek refund of the court fees, forthwith.

(b) These Petitioners would be at liberty to approach the Debts

Recovery Tribunal under Section 17 of the Securitisation Act within a period of two weeks from today.

- (c) Considering that the Presiding Officer of the Debts Recovery Tribunal is not available at Aurangabad and the charge is handed over to the Debts Recovery Tribunal at Pune, ad-interim protection granted by this Court on 03.02.2017 shall continue for a period of four weeks from today.
- (d) The Debts Recovery Tribunal may consider the request of these Petitioners for an ad-interim relief strictly on the merits of the matter and without being influenced by any observations of this Court made in this order as well as the order dated 03.02.2017.

kps

(RAVINDRA V. GHUGE, J.)