IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9506 OF 2017

THE LATUR URBAN CO-OPERATIVE BANK LTD., LATUR
VERSUS
VINAY HANUMANT YADKIKAR AND OTHERS

Advocate for Applicant : Mr. A.N. Irpatgire.
Advocate for Respondent No. 1 : Mr. Ashish Mangalani
h/f. A.A. Yadkikar.
Advocate for Respondent Nos. 2 to 4 : Mr. A.S. Pathan.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 04th December, 2018

PER COURT :

1. The petitioner/Bank is aggrieved by the order dated 31/08/2016, by which, the executing Court has rejected application Exhibit 51 filed by the petitioner/Bank which was an objection petitioner before the executing Court, in Special Darkhast No. 22/2014. Though the impugned order mentions a Motor Cycle, learned advocate for the respective sides inform that it should be read as a four wheeler Maruti Ertiga bearing No. MH 20 CH 7084.

2. Grievance is that though the Trial court has allowed application Exhibit 33 praying for the custody of the said vehicle, an application Exhibit 51 filed for seeking permission to take possession of the said vehicle, has been rejected by the executing Court on the ground that it is a vehicle attached by the order of the Court and as such an attached vehicle cannot be given to the Bank for auction.

3. I have heard the learned advocates for the respective sides at length. Respondent No. 1 is the original Borrower of the petitioner/Bank. He has taken loan for purchasing the above stated Car. The said Car was, therefore, hypothecated to the petitioner/Bank.

4. Respondent No. 1 suffered litigation at the hands of respondent Nos. 2 to 4 regarding a different dispute. They arrived at a compromise and the decree was passed. Record does not reveal that respondent No. 1 had brought it to the notice of the executing Court that the above stated vehicle could not be attached in so far as the execution proceedings initiated by respondent Nos. 2 to 4 are concerned. It, therefore, appears that under the orders of the executing Court, the said vehicle was attached.

5. Exhibit 33 is filed by this petitioner/objection petitioner. The decree holders mentioned before the executing Court that they are ready to hand over the possession of the said vehicle to the petitioner/Bank subject to the condition that any surplus amount from the auction proceedings should be deposited by the Bank in the Court. This indicates the desire of the decree holders that after the loan amount assessed by the Bank is satisfied, any excess amount received from the auction sale proceedings, should be deposited in the Court. The judgment debtor conveniently did not express any say on Exhibit 33 which indicates oblique motives on his part. If he had acted bonafide,

he would have offered his say to Exhibit 33 and would have intimated the executing Court that the said Car can be handed over to the Bank as it is already hypothecated and cannot be attached. The executing Court, therefore, allowed Exhibit 33 and the petitioner/Bank was directed to put forth a report by following the due procedure.

6. In the above backdrop, Exhibit 51 has been rejected by the Trial Court presuming that the vehicle is a Motor Cycle. Even otherwise, the impugned order indicates that if the vehicle is handed over to the Bank, it would lose its control over the attached property. I find that all the litigating parties need to be blamed for the impugned order.

7. On the one hand, respondent No. 1/ Borrower has behaved in an untruthful manner, which I find to be a deliberate act. He knew that the said Car was hypothecated and hence, he conspicuously did not give any say to application Exhibit 33 or 51. Such conduct of respondent No. 1 is deprecable. On the other hand, the parties should have addressed the executing Court on Exhibit 51, by clarifying that the said Car could not have been attached as it was already hypothecated. So also, it appears that the executing Court has failed to apply its mind to the matter and has mechanically signed the impugned order without even considering the fact that a Car is at issue in Exhibit 33 and not a Motor Cycle. Exhibit 51 carries a title that the Car is 'Maruti Ertiga'.

8. In view of the above, this petition is allowed. The impugned order dated 31/08/2016, is quashed and set aside and Exhibit 51 is allowed. Considering the stand taken by the decree holders, the said Car shall be handed over by the decree holders to the petitioner/Bank by following the due procedure as may be required in the proceedings before the executing Court.

9. Needless to state, if the petitioner auctions the said Car, the documents pertaining to the auction shall be produced before the executing Court within two weeks from the date of the auction and if the petitioner receive auction sale proceedings higher than the amount to be recovered from respondent No. 1 with reference to the said Car, it shall deposit the excess amount in the executing Court and it shall be adjusted against the dues of the judgment debtor.

(RAVINDRA V. GHUGE, J.)

S.P.C.