IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 452 OF 2018

KACHARULAL CHANDULAL SABOO
VERSUS
M/S SAMARTH INDUSTRIES THROUGH ITS PARTNER OMPRAKASH RAMPRASAD MANIYAR AND OTHERS

WITH
WRIT PETITION NO. 461 OF 2018

KACHARULAL CHANDULAL SABOO
VERSUS
SUSHILA OMPRAKASH MANIYAR THROUGH HER POWER OF ATTORNEY K J PORWAL AND OTHERS

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Advocate for the Petitioners : Shri A. D. Kasliwal
Advocate for Respondent Nos. 1 to 3 and 6 : Shri S. S. Gangakhedkar
Advocate for Respondent Nos. 5 : Shri R. R. Karpe

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th SEPTEMBER, 2018.

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PER COURT :

1. The petitioner- original plaintiff, in both these petitions, is the same person who is aggrieved by the order dated 07/10/2017, passed by the learned trial Court. Exhibit 33 and Exhibit 50 filed by this petitioner praying for addition of the purchasers of a property, which is said to be owned by the individual defendant Nos. 2 and 3, have been rejected and the

trial Court has declined leave to this petitioner for seeking addition of such parties.

2. I have heard the strenuous submissions of the learned Advocate for the petitioner and the learned Advocates for the respective respondents.

3. The issue before the trial Court is in Special Civil Suit Nos. 36/2017 and 37/2017 filed by the petitioner plaintiff seeking recovery of money from defendant Nos. 1, 2 and 3. One of the prayers put forth in these suits is that a decree of mandatory injunction be passed by directing defendant No. 4, which is the Housing Development Finance Corporation Limited, not to dispose off the mortgaged properties mentioned in Annexure-A to the plaint. The temporary injunction is also admittedly sought on these lines. Admittedly, application Exhibit 5 in the second suit was pending when these petitions were filed.

4. The contentions of the petitioner are quite speculative in the nature that if the petitioner succeeds in these suits, he

would be entitled to a recovery of amounts mentioned in the suit. The said amount can then be recovered from the properties of the future judgment debtors. Those future judgment debtors should be restricted today from selling or disposing of their properties. Properties mortgaged to respondent No. 4/ Financial Institution should be preserved and the said Financial Institution should be restrained from disposing of the said properties.

5. I am not required to advert to the entire contentions of the petitioner beyond those which are relevant, keeping in view that both the suits are pending adjudication and questions which are disputed cannot be considered by this Court in its Writ or supervisory jurisdiction.

6. The learned Advocate for the petitioner further submits that the transaction pertaining to the mortgaged property is quite suspicious and is a *sham* transaction. The concerned documents pertaining to the sale of the mortgaged property indicates that Rs. 60,00,000/- (Rs. Sixty Lakhs only) were earlier received by the defendants, who are owners of the

property, on 05/11/2012, Rs. 42,50,000/- (Rs. Forty Two Lakhs and Fifty Thousand only) are received from the HDFC Bank by a cheque dated 22/02/2016 and remaining Rs. 10,00,000/- (Rs. Ten Lakhs only) are received in cash on 22/06/2015. I do not find that this Court should be influenced by these submissions for the reason that all these disputed issues are yet to be dealt with by the Trial Court.

7. The petitioner submits that addition of the purchasers of the mortgaged properties needs to be permitted since the existing defendants, who are owners of the properties, have deliberately sold out such properties in order to prevent the recovery of money, if the petitioner succeeds in the suits.

8. The learned Advocate appearing on behalf of respondent No. 5, who is Manager of the HDFC Bank, submits vide the affidavit dated 05/04/2018, that the petitioner has suppressed the rejection of application Exhibit 5, by which, he had sought temporary injunctory orders against the public auction of the concerned property mentioned therein. The bank is a secured creditor and as such it has a right over the mortgaged property.

Such rights cannot be compared with the individual rights of the litigating sides, which are subject matter in the suits. By order dated 01/01/2018, application Exhibit 5 was rejected.

9. I had heard the learned Advocate for the petitioner in both these matters on 15/01/2018. By that time, Exhibit 5 filed by the petitioner in the second suit was already rejected by order dated 01/01/2018. This aspect was suppressed from this Court by the petitioner who could have fairly brought it to the notice of the Court that the injunction sought has been refused by the trial Court. Consequentially, the property mentioned in Exhibit 5, which was being sold and against which the petitioner was seeking injunctory orders, has not been interfered with by the said Court and the sale has materialised.

10. In the second petition, an affidavit in reply has been filed by the same bank stating that application Exhibit 10 filed by the plaintiff in the first suit for attachment before judgment in relation to the land Survey No. 5/1 at village Selu, District Parbhani, has been allowed by order dated 03/11/2017 and

defendant No.1 has been directed to furnish security to the extent of Rs. 10,80,000/- (Rs. Ten Lakhs and Eighty Thousand only) . I do not find that even this aspect has been mentioned in the memo of the second petition.

11. Since both the suits are pending, I would not wish to go into the disputed questions. In so far as such suppression of facts is concerned, I record my displeasure as regards the conduct of the petitioner.

12. The trial Court has dealt with the application filed by the petitioner seeking an amendment so as to add the purchasers of the suit properties. It is stated that if the petitioner succeeds in the suit, the amount can be recovered from those defendants, who are said to have taken the said money from the petitioner. It could then be recovered from the purchasers of their properties.

13. The trial Court has observed that the suit is for recovery of such amounts which the plaintiff claims to have given to the original defendant Nos. 1, 2 and 3. The compass

of the suit cannot be extended there beyond so as to make the purchasers of properties liable to pay the money which the defendants could be said to be liable to repay to the petitioner. The apprehended sale has also not been restrained by the learned Trial Court, inasmuch as, the affidavit in reply of the bank indicates that it has followed the provisions of the SARFAESI Act for resorting to the sale of the property and no plaintiff can seek relief against such a sale under the SARFAESI Act, by filing a civil suit.

14. Considering the above, I do not find that the impugned orders could be termed as being perverse or erroneous. Merely because a different view could be possible, would not be a ground for interfering with the impugned orders.

15. Both these petitions, being devoid of merit are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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