IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4185 OF 2017

Mr.Afroz Akhtar Abdul Khalique Ansari .. Petitioner
vs.
Konkan Mercantile Co-op. Bank
Ltd. and ors. .. Respondents

Mr. Wasim Ansari for the Petitioner.

CORAM : M. S. SONAK, J.
DATE: 27 MARCH 2018

P.C :

1] Heard Mr. Wasim Ansari, learned counsel for the petitioner.

2] The challenge in this petition is to the orders dated 17th September 2014 and 13th January 2017, by which, the trial court and appeal court have declined relief of temporary injunction to the petitioner-plaintiff in R.C.S. No. 1281 of 2012. Basically, the petitioner seeks a declaration that the notice dated 28th May 2012 issued by the respondent No.1-bank is illegal, null and void to the extent, it relates to the suit premises/suit flats referred to in the plaint.

3] It is the case of the petitioner/plaintiff that he is the *bonafide* flat purchaser of the suit premises/suit flats. It is his case that the rights in respect of suit premises and suit flats were created in his favour some time in the year 2005, i.e., much prior to the execution of the Deed of Mortgage dated 15th May 2007, which is the main document upon which respondent No.1-bank relies. Learned counsel for the petitioner refers not only to receipt-cum-agreement of the year 2005 but also the settlement agreement dated 26th July 2011. He submits that even respondent Nos.2 and 3, who are alleged to have executed Mortgage Deed with respondent No.1 bank, admit the case pleaded by the petitioner. Learned counsel for the petitioner submits that this is in fact a case where fraud has been played upon the petitioner. He points out that the Mortgage Deed is very vague when it comes to description of the mortgaged property. On the basis of such vagueness, the attempt is made to interfere with and in fact sell the suit flats/suit premises, which, in fact, are not even covered under the Mortgage Deed.

4] Having considered the contentions raised by learned counsel for the petitioner and after having perused the impugned orders as well as the record, I am satisfied that no case is made out to interfere with the impugned orders in the exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India.

5] In the first place, as held by the Hon'ble Supreme Court in ***Wander Ltd. and anr. Vs. Anox India P.Ltd. - 1990 (Supp) Supreme Court Cases 727,*** the scope of interference, even in an appeal against an interim order is quite limited. The appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against the exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

6] In this case, from the perusal of the impugned judgment and order made by the trial court, it is quite clear that the appeal court has confined itself to the jurisdictional parameters indicated by the Hon'ble Supreme Court in *Wander Ltd. (supra).* In fairness, it must be noted that the appeal court has virtually re-examined the material on record and addressed squarely the contentions now raised by and on behalf of the petitioner. The appeal court has noted that the case of the petitioner-plaintiff is mainly based upon the settlement agreement dated 26th July 2011 which is admittedly executed after the mortgage deed registered on 15th May 2007. The circumstance that respondent Nos.2 and 3 support the case of the petitioner is hardly surprising. Obviously, the said respondents are also interested in stalling of the attempts on the part of respondent No.1 bank in recovering its dues by selling of the mortgaged properties. There is no prima facie case of any fraud on the part of the bank made out by the petitioner – plaintiff. The two courts have concurrently held against the petitioner and there is no perversity or error of principle demonstrated by the petitioner.

7] Taking into consideration of the aforesaid circumstances, there is no case made out to interfere with the impugned judgments and orders. This petition is therefore dismissed. There shall however, be no order as to costs.

(M. S. SONAK, J.)