

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1002 OF 2018
WITH
CIVIL APPLICATION NO. 3305 OF 2018**

Smt.Poonam Jitendra Jain ... Appellant
V/s.
Abhyudaya Co-operative Bank Ltd. & Ors. ... Respondents

- Mr.Shyamsunder V. Solanke for the Appellant.
- Mr.Vishal C. Ghosalkar for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for Respondent No.1.

2] This Appeal takes an exception to the order dated 06/03/2018 passed by the Adhoc District Judge-3, Thane, thereby dismissing the application filed at Exhibit-30 in Regular Darkhast No.513 of 2014.

3] The said application was filed by the present Appellant under Order-21, Rule-58 of the Code of Civil Procedure for removal of

attachment by contending *inter-alia* that she has purchased the flat under attachment from one Mr.Gajanan Giridhar Patil, who had purchased the same from Mr.Dilip Bhanu Dake, who is the Judgment Debtor. She came to know about the attachment when she had been to the society for transfer of the share certificate of the flat in her name and hence, she has filed this application for vacating the attachment order.

4] This application came to be resisted by the Respondent-Decree Holder contending *inter-alia* that the sale-deed executed between Mr.Gajanan Giridhar Patil and the present Appellant is bogus and it was only to negate the claim of the Decree Holder on the said flat. It was submitted that the Appellant is not a bonafide purchaser and hence, application needs to be rejected.

5] The trial Court was, after considering the submissions and perusal of the material on record, pleased to dismiss the said application.

6] Being aggrieved thereby, the submission of learned counsel for the Appellant is that in this case the purchase of the flat by the Appellant is much prior to the order of attachment, passed by the

Executing Court. It is submitted that the Appellant has purchased this flat from Mr.Gajanan Giridhar Patil by registered sale-deed on 19/03/2015; whereas Mr.Gajanan Giridhar Patil has purchased it from the Judgment Debtor on 19/01/2015; whereas the order of attachment is passed on 13/07/2015, which is much after the purchase of the flat by the Appellant and also by her predecessor in title. In such situation, when the Appellant is the lawful purchaser of the property before its attachment, the attachment cannot prevail over her sale-deed and hence, it is liable to be removed.

7] To substantiate this submission, learned counsel for the Appellant has relied upon the judgment of the Karnataka High Court in the case of *Sri.D.L. Sridhar Vs. Sri.C.R. Chandramohan & Anr., ILR 2008 KAR 591*, wherein the reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *V. Sreedharan Vs. C. Balakrishnan & Anr., 1990(3) SCC 291*, in which, it was held that, Contractual obligation created by the pre-attachment document will prevail over the attachment order. It was held that, if the purchaser had already perfected his title, then it has to be held that, that title will prevail over the order of attachment which is passed subsequently.

8] However, the facts of the present case clearly go to show that the transaction in the case is not at all bonafide one. Having full knowledge of the Arbitration Award dated 05/12/2013 passed in the case and also of the fact that, thereafter even the letter was issued to the Society by the Decree Holder dated 24/12/2013, informing the Society that the Decree Holder is having the lein on the said flat and therefore, the Society should not allow any kind of sale or transfer of the above flat, the transaction in the case appears to have been executed.

9] This inference can be drawn from the facts that, though the sale-deed is alleged to be executed by the Judgment Debtor in favour of Mr.Gajanan Giridhar Patil on 19/01/2015 and by Mr.Gajanan Giridhar Patil in favour of the Appellant on 19/03/2015, the Appellant has not approached the Society for getting the share certificate transferred in her name till July 2017 and that too, though she was very well aware that she had to get the NOC from the Society. There is specific clause No.2 to that effect in the sale-deed executed in favour of the Appellant and also in favour of the Appellant's predecessor. It is pertinent to note that Mr.Gajanan Giridhar Patil has also executed indemnity bond of the said flat. Even then no such NOC is obtained either from the Society. A bonafide purchaser will not delay getting the

said flat transferred in the name, in the record of the Society or will at least verify from the Society, whether there is any lien or attachment on the said flat.

10] The very fact that the Appellant and the Appellant's predecessor had purchased the said flat after the Society has received the letter from the Decree Holder, makes it necessary to infer that they have done so, knowing fully well about the lien thereon. In such situation, the Executing Court has rightly refused to remove the attachment in the impugned order passed by the Executing Court.

11] Therefore, no interference is warranted in the order passed by the trial Court. The Appeal being without merits, stands dismissed.

12] In view of disposal of the Appeal, nothing survives in the Civil Application, hence stands disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]