IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4090 OF 2017
IN
FIRST APPEAL (ST) NO. 34959 OF 2017

Solapur Krushi Utpanna Bajar Samiti, Solapur ... Applicant

V/s.

The Maharashtra Rajya Sahakari Bank Ltd
and Others ... Respondents

Mr. Ashok B. Tajane, for the Applicant.

Mr. Bhushan Walimbe, for the Respondent.

CORAM : K. K. TATED &
B. P. COLABAWALLA, JJ.

DATE : MARCH 8, 2018

P.C.:

Rule on Civil Application. By consent of parties, Civil Application is heard finally.

2 In the First Appeal which has been already admitted, the Appellant has challenged the judgment and order dated 31st August, 2017 passed by the learned Civil Judge, Senior Division, Solapur, below Exhibits 1 and 5 in Civil Miscellaneous Application No.326 of 2017 filed under the provisions of Order 21 Rule 58 of the Code of Civil Procedure, 1908. This application was filed by Respondent No.1 herein being the

Maharashtra Rajya Sahakari Bank Limited who had given certain credit and loan facilities to Respondent No.2 herein above. The above Civil Application has been filed for the purposes of seeking a stay of the impugned judgment and order dated 31st August, 2017.

3 The brief facts disclose that Respondent No. 1 bank submitted an application under Order 21 Rule 59 of the CPC seeking to raise the attachment that was levied by the trial Court. According to Respondent No.1 it is the Co-operative Bank duly registered under the provisions of Maharashtra Co-operative Societies Act, 1960.

4 According to the bank, it had granted certain credit and loan facilities to Respondent No.2 herein who was in need of finance. The bank had sanctioned a loan of Rs.3.07 Crores on 12th October, 1991 and a further loan of Rs. 6.18 Crores on 30th March, 1995 respectively. To secure these loans, Respondent No.2 had executed and signed relevant documents for the purposes of security on 20th October, 1992. It is the specific case of the bank that it was agreed between it and Respondent No.2 that the property mortgaged or even purchased later would be subject to the mortgage and/or charge of Respondent No.1 bank.

5 Since Respondent No.2 committed default in repayment of

the loan, a notice dated 17th September, 2003 was issued by the bank without any success. It is in these circumstances that Respondent No.1 bank filed proceedings against Respondent No.2 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") and proceeded to take possession of the mortgaged property with the help of the District Magistrate, Solapur. This order was issued on 16th January, 2012. The action of the bank under the provisions of the SARFAESI Act was also challenged by Respondent No.2 by filing Securitization Application No.1912 before the DRT in Pune without any success. Ultimately, the Respondent Bank has taken possession of the mortgaged property on 14th July, 2016 and also issued public notice dated 16th July, 2016 directing the public at large that they should not create third party interest over the mortgaged and seized property.

6 Despite all this, the Applicant herein has, by virtue of consent judgment and decree passed in Special Civil Suit No. 316 of 2000, and which consent decree was entered into between the Applicant and Respondent No.2 herein (and to which Respondent No. 1 bank was never a party), filed a Special Execution Petition No.81 of 2010 for the purposes of executing the consent decree. Despite this petition being filed in 2010, the same was not moved for almost six

years by the Applicant. Finally, the executing court passed an order dated 5th November, 2016 for recovery of movable property. The possession of movable property worth Rs. 5.48 Crores was taken on 17th June, 2017.

7 It is in these light that Respondent No.1 bank filed an application under Order 21 Rule 58 objecting to the attachment and taking over of possession on 17th June, 2017. After hearing the parties, the application filed by the Respondent Bank was allowed.

8 On going through the impugned order, we find prima facie that the order does not required to be stayed. It is not in dispute that the mortgage in favour of the Respondent bank was created way back in 1992. In contrast, the Applicant before us is an unsecured creditor by virtue of the consent decree passed in its favour in the year 2002. Even the possession of the properties in question were taken over by the bank way back as on 14th July, 2016 and challenge to that action of the bank was also dismissed by the DRT.

9 Looking to all these facts and considering that the Applicant, if at all, would have only monetary claim, there is no question of staying

the order passed by the trial court.

10 In that view of the matter, we find no merit in the Civil Application and the same is dismissed. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.) (**K.K. TATED, J.**)