

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 1170 OF 2018

M/s.Inox Leisure Ltd.

...Petitioner

Vs.

The State of Maharashtra & Ors.

...Respondents

Dr.Birendra Saraf with Guha Roy and Anuj Dave I/b. Vidhii Partners for
Petitioner.

Ms.Uma Palsuledesai, AGP for Respondent Nos.1 and 2.

Mr.Harish R. Pawar for Respondent No.4.

CORAM : S.C. GUPTE, J.

DATE : 2 MAY 2018

P.C. :

Rule, taken up forthwith for hearing, by consent of counsel.

2 This petition challenges an order of attachment passed by
Respondent No.3 - Special Recovery and Sales Officer, and confirmed in
revision by Respondent No.2 - Divisional Joint Registrar of Co-operative
Societies, Mumbai Division, Mumbai.

3 The Petitioner is a licensee under Respondent No.5, who is the
owner of premises, being two galas, namely, Gala Nos.T-22 and G-68, in
Golmax Mall, Sector 2, Plot Nos.17, 18 and 19, Kharghar, Navi Mumbai-
410201. The Petitioner claims to be in possession and occupation of the
premises under a registered leave and license agreement dated 25 June
2010 executed by Respondent No.5. The premises are also subject matter
of an agreement for sale executed by Respondent No.5 in favour of one
Megha Hitesh Pandya and Hitesh Labhshankar Pandya. These two

purchasers are judgment debtors of Respondent No.4 bank. A recovery certificate has been issued against these judgment debtors under Section 101 of the Maharashtra Co-operative Societies Act in favour of Respondent No.4 bank. In pursuance of this recovery certificate, an attachment order is passed by Respondent No.3, Special Recovery and Sales Officer, under Rule 107 of the Maharashtra Co-operative Societies Rules. It is the grievance of the Petitioner that the agreement purchasers, who are the debtors of Respondent No.4 bank, do not own, or have any right to property in respect of, the subject premises. It is submitted that as agreement purchasers, all that the debtors can claim to have is a right to seek specific performance. It is submitted that at the most, it is this right that can be subjected to attachment. It is submitted that the order of Respondent No.3 of attaching the subject premises with a view to bring them to sale to satisfy the decretal dues of the decree holder bank has no warrant in law.

4 An agreement for sale does not create any right to property. An agreement purchaser merely has a right to specific performance. It is this right which belongs to the judgment debtors in the present case and which alone, if at all, can be attached by the decree holder co-operative society under Rule 107 of Maharashtra Co-operative Societies Rules. There is no question of the decree holder co-operative society taking over the possession, even symbolic, of the subject premises. The co-operative authorities in their impugned orders have completely lost sight of this central point of the case.

5 It is pertinent to note that the judgment debtors, as purchasers of the subject premises, are entitled to possession of the same only after the

aggregate consideration of Rs.16.42 crores and other sums mentioned in the agreement for sale are paid by them to Respondent No.5. The judgment debtors have admittedly paid a sum of Rs.4 crores only from out of this aggregate consideration of Rs.16.42 crores. In the event of default in making the payment in accordance with the agreement for sale, Respondent No.5, as a developer, is entitled to terminate the agreement by giving 15 days' notice in writing. The agreement provides that after such notice, the purchasers shall not have any right, title or interest or claim or demand of any nature whatsoever and howsoever arising into or upon the subject premises or any part thereof. It is also pertinent to note that in pursuance of the default in payment of the agreed consideration, Respondent No.5 developer has in fact given such notice of termination. Whether the Respondent was right in terminating the agreement is of course not the subject matter of the present application. That is a separate matter, which, the court is informed, is currently pending before the Civil Judge, Senior Division at Thane in a suit filed by Respondent No.5 seeking a declaration as to the rescission of the contract. What is important, however, to note for our purposes is that the agreement purchasers / judgment debtors of Respondent No.4 bank have neither a right to property nor possession thereof and in the premises, there is no authority in the Respondent bank as a decree holder to bring the property to attachment or seek its possession or bring it to a sale.

6 Considering the circumstances of the case, it is imperative and in the interest of justice that the Respondent bank may be allowed to attach only the rights of the judgment debtors under the agreement for sale dated 31 March 2010. The Respondent bank may, accordingly write to Respondent No.5 communicating attachment of the rights of the judgment

debtors under the agreement for sale. This would include the right to receive refund of the part consideration of Rs.4 crores paid under the agreement for sale.

7 Learned Counsel for Respondent No.4 bank submits that under Clause (d-1) of Sub-Rule (11) of Rule 107 of the Maharashtra Co-operative Societies Rules, the creditor society is bound to seek possession of the property, since no sale of immovable property under these rules can take place without taking over of such possession. There is no substance in this submission. In the first place, the creditor society must have a right to bring the immovable property to sale. Only then it can seek to satisfy the requirement of Clause (d-1) of Sub-Rule (11) of Rule 107 of the Maharashtra Co-operative Societies Rules. As noted above, no such right inheres in Respondent No.4 bank. Consequently, it cannot move to take over possession of the property.

8 In the premises, Rule is made absolute and the petition is allowed by quashing and setting aside the impugned orders passed by the Special Recovery and Sales Officer and the Divisional Joint Registrar of Co-operative Societies, Mumbai Division, Mumbai. It is clarified that the attachment shall only be operative in respect of such rights as the judgment debtors, namely, Megha Hitesh Pandya and Hitesh Labhshankar Pandya, have under the agreement for sale dated 31 March 2010 executed between Respondent No.5 and themselves. The Special Recovery and Sales Officer may, accordingly, communicate the attachment to Respondent No.5.

(S.C. GUPTE, J.)