IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAW) NO. 2926/2018
IN
WRIT PETITION NO. 7121/2018

Pusad Urban Co-operative Bank
..VS..
Piyush S/o Vikram Gholve & ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Shri A. Sambre, Advocate for the applicant/petitioner
Shri A.B. Patil, Advocate for the non-applicant/respondent nos. 1 to 3

CORAM : Z.A.HAQ, J.
DATED : 26/11/2018

Today C.A.W. No. 2926/2018 filed by the respondent nos. 1 to 3 (original plaintiffs) praying that the interim order granted by this Court on 23/10/2018 be vacated, is listed. Considering the nature of controversy, initially, I intended to dispose the writ petition itself, however, as the respondent nos. 4 to 9 are not served and they are not represented, the civil application filed by the respondent nos. 1 to 3 is taken up for further consideration.

According to the learned advocates for the petitioner and the respondent nos. 1 to 3, the urgency is that the suit property is being auctioned, the auction being scheduled for tomorrow i.e. 27/11/2018.

The relevant facts are:-

The suit property is the ancestral property of the respondent nos. 1 to 9. A registered power of attorney was executed on 23/04/2014 in favour of the respondent no. 4, authorizing him to deal with the suit properties including sale of the properties. It is not disputed that the respondent no. 1 has signed the registered power of attorney as witness. Considering the registered power of attorney, the petitioner – Bank accepted the proposal of the partnership firm of which the son of the respondent no. 4 is a partner, and agreed to give loan of Rs. 3 crore. The mortgage deed in respect of the suit properties came to be registered on 14/10/2014 and then the amount of loan was disbursed. As there was default in repayment, the petitioner – Bank initiated the proceedings before the Registrar and the recovery certificate under Section 101 of the Maharashtra Co-operative Societies Act, 1960 (for short “the Act of 1960”) was issued on 06/02/2016. The suit properties were attached on 29/06/2016. The petitioner – Bank took steps to conduct the auction of the suit properties and the auction was fixed on 11/04/2017. After the public notice for the auction was issued in March, 2017, the son of the respondent no. 4 deposited an amount of Rs. 1,66,00,000/- and assured to deposit the balance amount and therefore the petitioner – Bank postponed the conduct of the auction. However, the respondent no. 4 and his son failed to deposit the balance amount and therefore the petitioner – Bank again took steps to auction the suit property and accordingly the public notice was issued on 08/07/2018. Pursuant to this notice, no buyers came forward and therefore the petitioner – Bank again took steps to auction the property and the auction is scheduled on 27/11/2018. The public notice for this auction is issued on 26/10/2018. Anticipating the petitioner – Bank's move, the respondent nos. 1 to 3 issued notice dated 27/07/2018 to the Chairman, Manager and Recovery Officer of the petitioner – Bank and the Assistant Registrar, Co-operative Societies claiming that the respondent nos. 1 to 3 are having their share in the suit property and the suit property cannot be auctioned. The petitioner – Bank gave reply to this notice on 03/08/2018 denying the contention of the respondent nos. 1 to 3 that the suit property cannot be put to auction. After receiving the reply, the respondent nos. 1 to 3 filed civil suit praying for decree for partition and separate possession. The respondent nos. 1 to 3 also prayed for decree for injunction restraining the petitioner – Bank from taking any action adverse to their interests. As according to the respondent nos. 1 to 3, there was an urgency in the matter as auction was to be held by the petitioner – Bank, they filed application (Exh. 7) praying that the requirement of waiting for two months after issuance of notice be waived. The learned trial Judge has allowed this application (Exh. 7) by the impugned order.

The facts recorded above show that there are no bonafides on the part of the respondent nos. 1 to 3. As recorded earlier, the respondent no. 1 has signed the registered power of attorney as a witness and on the basis of this power of attorney, the petitioner – Bank has granted loan to the son of the respondent no. 4 in whose name the power of attorney is executed. The first auction was scheduled in April, 2017. It goes unexplained as to why the respondent nos. 1 to 3 had not issued notice as required by Section 164 of the Act of 1960 at that stage. It is not that the petitioner – Bank has suddenly taken action in the matter and the respondent nos. 1 to 3 were not in a position to comply with the requirements of Section 164 of the Act of 1960. The respondent nos. 1 to 3 have not even pleaded that they were not aware about the first auction which was scheduled in April, 2017.

In the above facts, I am not inclined to vacate the interim order and to direct the learned trial Judge to consider the application filed by the respondent nos. 1 to 3 praying for temporary injunction.

The civil application is **dismissed** with costs quantified at Rs. 25,000/- to be paid by the respondent nos. 1 to 3 to the petitioner – Bank.

The respondent nos. 1 to 3 shall produce receipt on record of the civil suit within one month showing that the amount of costs is paid to the petitioner – Bank.

JUDGE

Ansari