**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

1. CIVIL APPLICATION NO. 7095 OF 2019
IN/WITH
WRIT PETITION No. 3803 of 2019

Ankush Vasantrao Kadam ...Petitioner

VERSUS

The State of Maharashtra and others ...Respondents

Mr. L.H. Kawle, Advocate for petitioner
Mr. S.R. Yadav, Asstt Govt. Pleader for respondents No.1 & 5
Mr. V.P. Golewar, Adv., h/f. Mr. A.R. Joshi, Adv. for Respt. No.2

CORAM : RAVINDRA V. GHUGE, J.
DATE : 24th June, 2019

PER COURT:

1. I have heard the learned Advocates for the applicant-petitioner and the respondent No.2-bank as well as the learned Asstt. Govt. Pleader for quite some time. The original borrower-respondent No.3 and father of the borrower, respondent No.4, have chosen not to remain present in this Court despite service of the Court notice.

2. After considering the submissions of the learned Advocates, I find this to be a classic case of a guarantor, who

has played mischief with the Court.

3. The petitioner-guarantor and the original borrower were also before this Court in Writ Petition No. 691 of 2019, being aggrieved by the bank having sought the aid of the police to take possession of the mortgaged property. This Court, by order dated 17th January, 2019 directed the borrower and the guarantor to deposit Rs. 25,00,000/- within three weeks and further Rs. 25,00,000/- within a further period of five weeks. It is admitted that not a single penny has been deposited.

4. The petitioner-guarantor alongwith respondent No.3-borrower were before this Court in Writ Petition No. 711/2019, as the Divisional Joint Registrar, Co-operative Societies, Latur, dismissed the revision application since the borrower and guarantor failed to deposit 50% of the assessed amount under the recovery certificate. This Court considered the said petition and issued certain directions while condoning the delay in the proceedings pending before the Divisional Joint Registrar, Co-operative Societies, under Section 154 read with sub-section 2(A) of the Maharashtra Co-operative Societies Act.

5. The order in Writ Petition No. 711 of 2019 dated 9th April, 2019, reads thus: -

" *i. The application for condonation of delay filed by the*

present petitioners before the Divisional Joint Registrra Co-operative Societies, Latur, is allowed;
(ii) The revision application be registered in accordance with law.
(iii) The petitioners shall deposit 50% of the amount as per the Recovery Certificate issued against the petitioners under Section 101 of the Maharashtra Cooperative Societies Act, 1960 within four weeks from today.
(iv) If the petitioners deposit the amount within the stipulated period, the Divisional Joint Registrr shall hear and dispose of the revision application in accordance with law.
(v) The respondent-bank may continue the further process in respect of the property attached by it, but the entire process shall be subject to decision of the rvision application, to be decided by the Divisional Joint Registrr and till then, the respondent Bank shall not issue sale certificate.
(vi) The parties to appear before the lerned Divisional Joint Registrar on 14th May, 2019.
(vii) The petition stands disposed of in the aforesaid terms."

6. It is conceded by the petitioner-guarantor that the borrower had opened four loan accounts and the total loan amount in these four loan accounts was more than Rs. 8 crores. The land admeasuring 3 acres + two bungalows, in all admeasuring 130770 square feet of area alongwith a factory plant and machinery installed therein, were collectively mortgaged for these four loan accounts.

7. In yet another petition filed by the guarantor bearing Writ Petition No. 3438/2019, this Court passed an order on 12th March, 2019 recording the contention of the guarantor that the property of the principal borrower already attached by the bank

was worth double the amount payable to the bank by way of arrears of loan accounts. Hence, this Court restrained the bank, attaching the property of the guarantor. This petition is still pending before this Court.

8. The borrower and the guarantor moved a Writ Petition No. 691/2019 and obtained an order on 9th April, 2019 from this Court disposing off the petition for being infructuous. On the same day, the other Writ Petition No. 711 of 2019 was heard by the same Court in which the above reproduced seven directions were issued and the said petition was also disposed off.

9. The petition, in hand, was filed on 11th March, 2019 and was circulated independently on 20th March, 2019 before this Court. An *ex-parte ad-interim* relief was obtained from this Court by making a statement that the Recovery Officer has already attached the property of the principal borrower and, therefore, the property of this petitioner-guarantor need not be attached. Though it is pleaded in paragraph No. 7 of the memo of the petition that the borrower and the guarantor had not deposited the total amount of Rs. 50,00,000/- as was directed on 17th January, 2019 in the earlier two petitions No. 691 of 2019 and 711 of 2019, it appears from the order passed by this Court on 12th March, 2019 that this Court was made to believe by the

guarantor that the property of the borrower is worth double the amount of the arrears of the loan and as that property has been attached, the guarantor should be protected.

10. The learned Counsel for the guarantor submits that he has not suppressed any fact from this Court as is evident from paragraph No.7. In my view, it is a common knowledge that the Judges cannot read every page in the petition paper book with the board of the Court being more than 75 matters every day and the Judges rely upon the submissions made by the learned Advocates.

11. The submissions made by the learned Advocate for the guarantor are recorded in the order dated 20th March, 2019. Had he brought it to the notice of this Court that he had enjoyed the interim relief granted earlier and also benefitted from the order of the condonation of the delay in filing the revision, and has not deposited the amount of Rs. 50,00,000/-, this Court would not have granted the relief to such a guarantor. He has not complied with the order of this Court passed earlier thereby indicating that he does not desire to comply with the directions of the Court though interim relief is enjoyed. This Court would then have gathered that the guarantor has not shown his bonafides. This relief has been obtained on 20th March, 2019.

12. It needs to be noted that the entire fact situation as above has been brought to the notice of this Court by Special Recovery Officer Shri Sanjay Ambadasrao Kapse R/o Aurangabad, vide affidavit-in-reply filed today.

13. The learned Counsel for the guarantor submits that some of the immovable properties have already been sold by the Recovery Officer and an amount of Rs. 2,52,17,000/- has been recovered through such sale proceeds. The learned Advocate for the bank submits that the recovery of amount is huge and presently, only as regards one loan account, the recovery is for Rs. 2,61,54,112/- as on 20th June, 2019.

14. The learned Advocate for the guarantor placed his reliance upon the judgment of this Court in the matter of ***Mr. Kadir Ilahi Bagwan Vs. Mrs. Usha Anandrao Yadav, 2018(6) ALL MR 566*** to support his contention that if any mortgaged property is sold without notice to the owner, this Court has directed the return of the such property. I find that the facts emerging in this case as regards the lack of bonafides on the part of the guarantor and the mischief played by the guarantor with the Court, do not appear in the case of ***Mr. Kadir Ilahi Bagwan***, (supra).

15. The Hon'ble Apex Court has delivered the judgment in

the matters of ***Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC 398*** and ***Bhaskar Laxman Jadhav and others vs. Karamveer Kakasaheb Wagh Education Society and others, (2013) 11 SCC 531,*** concluding that when a litigating party plays mischief with the Court or lacks bonafides or obtains orders from the Court in proceedings without bringing the entire facts before the Court, relief should be denied to such a litigant and costs should be imposed.

16. In view of the above, considering the effect of the conduct of the petitioner-guarantor, coupled with his conduct in company with the principal borrower, emerging from the orders passed in other petitions, I find that not only interim relief granted to the petitioner deserves to be vacated, but this petition deserves to be dismissed by imposing costs. The learned Advocate for the bank and the learned Asstt. Govt. Pleader submit that the costs amount may be divided in equal shares to the Government Cancer Hospital at Aurangabad and 'Shantivan', Arvi, Taluka Shirur Kasar, Dist. Beed.

17. In view of the above, this petition is dismissed by imposing costs of Rs. 50,000/- (Rs. fifty thousand only). The respondent-bank shall recover this amount from the sale proceeds of the mortgaged property and deposit the said amount of Rs. 50,000/- in this Court on or before 31st August, 2019.

Rs. 25000/- (Rs. Twenty five thousand only) shall be transmitted by the Registry of this Court to the Government Cancer Hospital at Aurangabad and another amount of Rs. 25000/- (Rs. twenty five thousand only) shall be deposited with 'Shantivan', Arvi, Taluka Shirur Kasar, Dist. Beed, having Account No. 33446000963 with the State Bank of India, Shirur Kasar Branch, IFSC Code : SBIN0005995, by way of charity.

18. List the Writ Petition No. 3438 of 2019 filed by the guarantor-petitioner for passing orders on 4th July, 2019.

19. The pending civil application does not survive and stands disposed off.

(RAVINDRA V. GHUGE)
JUDGE

Madkar