IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10454 OF 2019

VISHWAKALYAN URBAN CO-OP. CREDIT SOCIETY LTD.
VERSUS
SHRINIWAS MOHANLAL MALANI AND OTHERS
...
Advocate for Petitioner : Shri Maniyar Irfan D.
Advocate for Respondent : Shri Bhandari Anand P.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 28, 2019
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PER COURT :-

1. The petitioner / defendant No.3 in RCS No.789 of 2018, is aggrieved by the order of the trial Court dated 12.7.2019, by which, application Exhibit 12, filed by respondent No.1 / plaintiff has been allowed and the petitioner is directed to remove the seal applied on the said shop / suit property, forthwith. This relief is to continue till application Exhibit 5 filed by respondent No.1 / plaintiff is decided.

2. I have heard the strenuous submissions of the learned Advocate for the petitioner / Credit Society and Shri Bhandari, on behalf of respondent No.1 / plaintiff, who has filed an affidavit in reply.

3. The facts in brief are as under:-

(a) The plaintiff claims to have entered into an agreement to sell with the father of respondent No.2 - Harilal..

(b) A consideration of Rs.2,65,000/- is said to have been paid.

(c) A registration under the Bombay Shops and Establishments Act has been obtained by the plaintiff for running a flour mill and red chillies grinding mill.

(d) An electricity connection is also acquired in the name of the plaintiff.

(e) Since respondent No.2 did not execute a deed of assignment, though the property stood in his name on account of the lease deed executed by CIDCO in 2016, the plaintiff had no option but to prefer a suit in 2018.

(f) Respondent No.3 - Kiran took loan from the petitioner for an amount of Rs.25,00,000/- on 9.7.2017.

(g) Kiran takes a stand in the suit that the Bank may create a charge on the suit property.

4. I am of the view that when the suit was pending and application for temporary injunction is to be decided, the petitioner should have taken the permission of the trial Court before putting a seal on the suit property on 14.6.2019, when the plaintiff is said to have proceeded out of station and the suit was adjourned at the

behest of the defendants on 3.6.2019.

5. The trial Court has recorded in the order that the plaintiff survives on the business operated in the said shop premises. The Bank should have followed the due procedure laid down by law if it wanted to take the possession of the suit property. The trial Court has also concluded that when the temporary injunction application was pending, the Bank should have restrained itself from sealing the property without the leave of the Court.

6. I do not find that the impugned order could be termed as being perverse or erroneous. It appears to be an equitable order and the premises of the plaintiff are de-sealed until Exhibit 5 is decided.

7. This petition is, therefore, dismissed. Needless to state, the trial Court shall record the oral submissions of the litigating sides on application Exhibit 5 and shall endeavour to decide the same expeditiously.

(RAVINDRA V. GHUGE, J.)

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