IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7829 OF 2019

Jayesh Badani .... Petitioner.
V/s
State of Maharashtra and Others .... Respondents.

Mr. K.V. Tembe I/b Dhananjay S. Mahamuni for the Petitioner.
Mr. S.L. Babar AGP for Respondent Nos. 1 and 2.
Mr. Atul Damle, Senior Advocate alongwith Mr. Onkar Warange for Respondent Nos. 3 and 4.

CORAM: NITIN W. SAMBRE, J.

DATE: 18th July, 2019

P.C.:-

1] By consent of parties, Petition is taken up for final disposal at the admission stage.

2] The warrant of attachment of the property of the Petitioner, which he claims to have purchased by virtue of the terms of understanding executed in Application Nos.1798 of 2004 and 1792 of 2004 on 16th October, 2005, was the subject matter of challenge before the Divisional Joint Registrar, Co-operative Societies.

3] The Special Recovery Officer, so also the Divisional Joint

Registrar have permitted Respondent-Bank to attach the property of which dispossession of the Petitioner is threatened. As such, this Petition.

4] The submissions are, the terms of understanding referred to above, the agreement of sale entered into between the Petitioner and borrower, who is the owner of the property and the Respondent-Bank, who is a confirming party, so also two communications dated 31st October, 2005 in categorical terms speak of the receipt of consideration by the Respondent-Bank. According to the learned Counsel for the Petitioner, once the Respondent-Bank is not disputing that it has received consideration of Rs 30 lakhs towards the property in question and as per the terms of the agreement of sale, the Respondent-Bank has already agreed to transfer the said property in favour of the Petitioner, the order of attachment ought not to have been issued. According to him, all these aspects are lost sight of by both the authorities who have passed the orders impugned.

5] Mr. Damle, the learned Counsel, would oppose the claim for and on behalf of the Bank, as, according to the Respondent-Bank, the property, as on date, stood in the name of the principal borrower, even if Respondent-Bank has received consideration of Rs 30 lakhs and has entered into agreement of sale. According to him, the Bank apprehends that there is some deal between the Petitioner and the borrower from whom the property was purchased, which is formed to be the basis for issuing an order of attachment. As such, he submits that the orders impugned are very much sustainable.

6] Considered the rival submissions.

7] The terms of understanding entered into between the Petitioner, and Respondent-Bank including the Co-operative Society in categorical terms speak of the Bank agreeing to part with possession and title in favour of the Petitioner based on which agreement of sale in favour of the Petitioner was entered into. I am informed that the Petitioner is already put into possession of the property in question. The Respondent-Bank, as agreed in terms of the agreement of sale, has received consideration of Rs 30 lakhs. Vide confirmation issued by the Respondent-Bank of even date referred supra, it has been categorically agreed by the Bank of having permitted the sale of the flat in question and having extended no objection for releasing title deed of the said property. Further communication speaks of release of charge over the said property with further request to Housing Society to make note of the release and effect transfer in favour of the Petitioner. It is also confirmed by the Respondent-Bank that it has released title papers in favour of the Petitioner and has no objection for effecting transfer of the same in favour of the Petitioner.

8] In the aforesaid backdrop, what appears to be the contention of the Respondent-Bank for issuing the warrant of attachment is, the property instead of having got transferred to his name on record by the Petitioner, he continued the same to be in the name of the borrower, which is found to be the basis for an order of attachment.

9] In the aforesaid background, if the material on record is appreciated, the Bank has failed to demonstrate as to whether there was any clandestine deal between the Petitioner and the borrower or a deal in the nature of benami transaction in favour of the Petitioner by the borrower, who is the owner of the property. Merely because the Petitioner has failed to get the property transferred/mutated in his name, though having parted with entire consideration, cannot by itself be found to be the basis for ordering attachment and sale of the property of the Petitioner. The most important aspect of which this Court must take judicial note of is, the Petitioner has already parted with consideration and the Respondent-Bank has acknowledged the receipt of the same.

10] In view of the above, the orders impugned are not sustainable, as both these orders failed to consider the aforesaid factual and evidentiary matrix of the matter. As such, Petition is allowed in terms of prayer clause (a). However, this order will not preclude the Petitioner from claiming absolute title in the property, particularly as regards execution of the title deed in his favour, which he undertakes to get executed within six months from today. If the Petitioner fails to get executed such title deed, it shall be open for the Bank to proceed against the Petitioner afresh.

(NITIN W. SAMBRE, J.)